STATE OF MONTANA

AIR QUALITY RULES

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MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Sub-Chapter 1

Variance Procedures

16.8.101 INITIAL APPLICATION (1) Initial application for exemption shall be in the form prescribed by and obtained from the department.

(2) Upon filing of the application, public hearing thereon will be scheduled. No hearing will be held until the requirements of the Montana Environmental Policy Act have been fulfilled. Time for hearing will also take into consideration due notice requirements set forth herein.

(3) Notice of hearing is to be served upon the applicant and the general public not later than 30 days prior to the hearing. Notice of hearing is also to be given to the local air pollution control officer having jurisdiction, to all known interested persons and to any person or group upon request.

(a) Notice may be served upon applicant by mail.

(b) Notice is to be published at least once in a newspaper of general circulation published in the geographical area wherein the plant or equipment of applicant is located.

(c) The contents of the public notice shall include at least the following:

(i) Name and address of the applicant;

(ii) Time, location and nature of the hearing;

(iii) Brief description of applicant's activities, matters asserted, or operations which result in the emissions described in the application;

(iv) A brief description of the purpose of the hearing, including a reference to the particular statute and rules involved;

(v) Address and phone number of the premises at which interested persons may obtain further information, inspect, copy or obtain a copy of the application;

(vi) The legal authority and jurisdiction under which the hearing is to be held.

(4) Public hearings held pursuant to this subchapter are adjudicatory fact hearings to consider the proposed application for variance and its conditions.

(a) Any person may submit a request to be a party within 20 days after date of publication of public notice as required by (3)(b). Requests to be a party under this paragraph shall be directed to the department and shall state:

(i) Name and address of the person making the request;

(ii) Identify the interest of the requester and any person or group requester represents;

(iii) Include an agreement by requester and any person represented by requester to be subject to examination and

cross-examination, and in case of a corporation, to make an employee available for examination and cross-examination at his own expense upon request of the presiding officer, on his own motion or by motion of any party;

(iv) Any request to be made a party shall state the position of the requester on the issues to be considered at the hearing.

(b) Conduct of the hearing shall be in accordance with "contested case" procedures of the Montana Administrative Procedure Act and the model rules of the attorney general promulgated in pursuance thereto.

(5) Within 30 days after completion of the hearing, the presiding officer shall certify the record to the department. If the official of the department, who is to render the final order, or if a majority of the members of the board of health and environmental sciences, which is to concur in that order, was not present at the hearing or has not read the record, the decision, if adverse to the applicant, shall not be made until a proposed order is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral arguments to the department or board respectively. Waiver of compliance with this provision may be made by stipulation of all parties. Within 30 days following certification of the record or after final submission of the matter to the department, a final decision shall be issued. The final order shall include the matters and things set forth in ARM 1.3.225 including findings of fact and conclusions, separately stated. Notice of final order is to be given parties and their attorneys within 20 days following issuance of the final order. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-212, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73.)

16.8.102 RENEWAL APPLICATION (1) No renewal of exemption shall be granted except on application, submitted on a form designated "application for renewal" form obtained from the department.

(2) Public notice of the renewal application shall be given at the applicant's expense immediately prior to the submission of the application, in the following manner:

(a) By publication and notice at least once in a newspaper of general circulation published within the geographical area wherein the plant or equipment is located.

(b) The notice shall state, in effect, that application is being made to the board to renew an exemption permit to allow the continued operation of equipment or plant at a specified address, which equipment or plant emits air contaminants not otherwise allowed by rules of the department. The notice shall also state the name and business address of the

applicant.

(c) A copy of the notice, certified as to the manner of publication, shall be filed with the department concurrent with the publication.

(3) If complaint is made to the department on the application for renewal:

(a) Public hearing shall be held on due notice served upon the holder of the exemption complained of, upon the complainants, and upon the general public.

(b) Manner of service and publication of notice shall be the same as provided in ARM 16.8.101(3).

(c) The nature and conduct of the hearing shall be the same as provided for in ARM 16.8.101(4).

(d) The form of the complaint shall include, but is not limited to, the name and address of the complainant, the name and address of the holder of the exemption complained of, and a sufficient statement of the complainant to allow the department to give notice of the issues involved at the hearing. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-212, MCA; Eff. 12/31/72; AMD, Eff. 11/4/73.)

Sub-Chapter 2

Enforcement Procedures

16.8.201 NOTICE OF VIOLATION--ORDER TO TAKE CORRECTIVE ACTION (1) Contents of written notice of violation. The notice of violation may contain, but is not limited to:

(a) The name of the alleged violator.

(b) His last known address.

(c) The number of the permit, if any, issued under 75-2-204 and 75-2-211, MCA.

(d) A summary of the complaint made by the department including:

(i) The specific provisions of the statute or rule alleged to be violated,

(ii) The specific facts alleged to constitute a violation.

(e) A copy of either:

(i) The order to take corrective action, if given, or

(ii) The notice of hearing requested by the board to answer the charge.

(f) If the board has issued an order to take corrective action, a statement in conspicuous type stating that the alleged violator will be found in default and the order will become final and enforceable unless, not later than 30 days after the notice is received, the person named therein shall petition the board in writing for a hearing.

(2) Notice of violation shall be served personally upon the alleged violator, and acknowledgement of service obtained from the alleged violator or affidavit of service will be completed by the person making the service and made part of the file. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-401, MCA; Eff. 12/31/72.)

16.8.202 APPEAL TO BOARD (1) If the alleged violator desires to petition the board for hearings, the form of the petition shall be in substantially the following form:

(a) The name, address and telephone number of the petitioner, or other person authorized to receive service of notices.

(b) The type of business or activity involved, and the address of such business.

(c) A brief summary of the accusations made by the department in its notice of violation, and the date of such notice.

(d) A statement that petitioner denies the allegations in full or in part, and that he seeks a hearing to protest the issuance of any corrective order.

(e) The petitioner shall sign the petition, or it shall

be signed by some person on his behalf, and the authority of such other person so signing must appear.

(2) If hearing is held, rules of practice as provided in contested cases shall apply. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-401, MCA; Eff. 12/31/72.)

Sub-Chapter 3

Rehearing Procedures

16.8.301 STANDING (1) Any person aggrieved by any order of the board may apply for rehearing upon the grounds set forth in 75-2-411, MCA. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-411, MCA; Eff. 12/31/72.)

16.8.302 FORM AND FILING OF PETITION (1) The petition shall contain the following information:

(a) The name, address and telephone number of the aggrieved party or other party authorized to receive service of notices.

(b) The file or docket number assigned by the board to the original hearing from which rehearing is requested, and any additional identifying title assigned to the original hearing.

(c) A brief summary of the issues involved in the original hearing.

(d) A statement of which subsection under the statute the petitioner asserts is the jurisdictional basis for the grant of a rehearing.

(e) A summary argument stating why petitioner is entitled to a rehearing under the subsection cited as his jurisdictional basis. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-411, MCA; Eff. 12/31/72.)

16.8.303 FILING REQUIREMENTS (1) The aggrieved party shall file his petition for a rehearing within 20 days following his receipt of the board's written decision adverse to his interest. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-411, MCA; Eff. 12/31/72.)

16.8.304 BOARD REVIEW (1) The board must act within a reasonable time to grant or deny petitioner's request for rehearing, but in no event shall such time exceed 30 days following receipt of said petition.

(2) Procedure shall be in accordance with the rules of procedure for adversary or contested cases if the original hearing concerned enforcement, emergency procedures or where adjudicated facts were at issue; if the original hearing concerned variance procedure, substantive rule making or the establishment of local air pollution control programs, rules of procedure for appellate type hearings will be used. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-411, MCA; Eff. 12/31/72.)

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Sub-Chapter 4

Emergency Procedures

16.8.401 CONDITIONS (1) Emergency conditions exist if the director finds:

(a) A generalized condition of air pollution existing which requires immediate action to protect human health or safety.

(b) That emissions from the operation of one or more air contaminant sources are causing imminent danger to human health or safety. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-402, MCA; Eff. 12/31/72; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.402 ORDERS REQUIRED (1) If the director finds that either of said emergency conditions exist, he shall, without delay, order the person causing or contributing to air pollution to reduce or discontinue immediately the emission of air contaminants. Concurrently with the issuance of such order, the director shall fix a place and time not later than 24 hours after the issuance of the order for a hearing to be held before the board. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-402, MCA; Eff. 12/31/72.)

16.8.403 NOTICE OF HEARING--SERVICE (1) Notice of hearing must be given to the alleged violator concurrently with the order to reduce or discontinue immediately the emission of air contaminants. The elements of the notice must be essentially the same as those given under ARM 1.3.212 with the following particular changes:

(a) Service shall be by telephone or telegram or any expeditious means other than mailing. The records of the department will reflect the time and manner of notice.

(b) All allegations shall be as brief and concise as possible consistent with understanding.

(c) The alleged violator shall be informed that he may be represented by counsel, but shall not be entitled to issuance of subpoenas. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-402, MCA; Eff. 12/31/72; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.404 HEARING (1) The alleged violator shall have the right to know and meet the evidence and arguments of the director, including the right to present evidence, cross-examine witnesses, and present oral argument.

(2) Not more than 24 hours after the commencement of the hearing, and without adjournment thereof, and with the presence or absence of the alleged violator, the board shall affirm, modify, or set aside the order of the director. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-402, MCA; Eff. 12/31/72; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

Sub-Chapter 5

Ambient Air Quality Standard Rule Procedures

16.8.501 PROCEDURES FOR HEARING ON PROPOSED AMBIENT AIR QUALITY STANDARDS IS REPEALED (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1978 MAR p. 1459, Eff. 1/26/79; AMD, 1979 MAR p. 319, Eff. 3/30/79; REP, 1981 MAR p. 556, Eff. 6/12/81.)

Sub-Chapter 6 reserved

Sub-Chapter 7

General Provisions

16.8.701 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) "Administrator" means the administrator of the U.S. environmental protection agency or his designee.

(2) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere.

(3) "Air quality operating permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to subchapter 20 of this chapter.

(4) "Air quality preconstruction permit" means a permit issued, altered or modified pursuant to subchapters 9, 11, 17, or 18 of this chapter.

(5) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in ARM 16.8.1423 or 16.8.1424;

(b) The applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition.

(6) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(7) "Ambient air monitoring" means measurement of any air pollutant, odor, meteorological or atmospheric characteristic, or any physical or biological condition resulting from the effects of air pollutants or meteorological atmospheric conditions provided the measurement is performed in an area constituting ambient air.

(8) "Boiler or industrial furnace" means any source or emitting unit that is subject to the provisions of 75-10-405(2)(f) and 75-10-406, MCA, and rules promulgated thereunder defining the class of activities subject to regulation under those sections, found at ARM 16.44.1101.

(9) "Commercial hazardous waste incinerator" means an incinerator that burns hazardous waste, or a boiler or industrial furnace. The term "commercial hazardous waste incinerator" does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

(10) "Commercial medical waste incinerator" means any incinerator that incinerates medical waste, except that "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite.

(11) "Control equipment" means any device or contrivance which prevents, removes, controls or abates emissions.

(12) "Emission" means release of air contaminants into the ambient air.

(13) "Emission standard" means an allowable rate of emissions or level of opacity, or a requirement that certain equipment, work practices or operating conditions be employed to assure continuous emission control. An emission standard may be contained in a rule or regulation, consent decree, judicial or administrative order, or permit condition.

(14) "EPA" means the U.S. environmental protection agency.

(15) "FCAA" means the Federal Clean Air Act, 42 U.S.C. 7401, et seq.

(16) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(17) "Fuel burning equipment" means any furnace, boiler, apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purpose of producing heat or power by indirect heat transfer.

(18) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(19) "Hazardous air pollutant" means any air pollutant listed as a hazardous air pollutant pursuant to section 7412(b)(1) of the FCAA.

(20) "Hazardous waste" means a substance defined as hazardous waste under either 75-10-403, MCA, or administrative rules found at ARM Title 16, chapter 44, subchapter 3, or a waste containing two parts or more per million of polychlorinated biphenyl.

(21) "Hazardous waste incinerator" means any incinerator that incinerates hazardous waste.

(22) "Incinerator" means any single or multiple chambered combustion device which burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance,

primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(a) Incinerators do not include:

(i) safety flares used for combustion or disposal of hazardous or toxic gases at industrial facilities such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners such as tepee, wigwam, truncated cone or silo burners.

(23) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

(24) "Montana state implementation plan" means the state implementation plan adopted by EPA for the state of Montana pursuant to the FCAA, found at 40 CFR Part 52, subpart BB.

(25) "Multiple chamber incinerator" means any incinerator consisting of three or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned.

(26) "Odor" means that property of an emission which stimulates the sense of smell.

(27) "Opacity" means the degree, expressed in percent, to which emissions reduce the transmission of light and obscure the view of an object in the background. Where the presence of uncombined water is the only reason for failure of an emission to meet an applicable opacity limitation contained in this chapter, that limitation shall not apply. For the purpose of this chapter, opacity determination shall follow all requirements, procedures, specifications, and guidelines contained in 40 CFR Part 60, Appendix A, method 9, or by an in-stack transmissometer which complies with all requirements, procedures, specifications and guidelines contained in 40 CFR Part

60, Appendix B, performance specification 1.

(28) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a source or alteration, or the authorized agent of the owner, or the person who is legally responsible for the overall operation of the source or alteration.

(29) "Particulate matter" means any material, except water in uncombined form, that is or has been airborne, and exists as a liquid or a solid at standard conditions. For the purposes of this definition, standard conditions are defined in the applicable test method.

(30) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, the state or a subdivision or agency of the state, trust, estate, interstate body, federal government or an agency of the federal government, or any other legal entity.

(31) "PM-10" means particulate matter with an aerodynamic diameter of less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated in accordance with 40 CFR Part 53.

(32) "PM-10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method as specified in 40 CFR Part 51, Appendix M and condensible emissions measured by an impinger method, or by an alternative equivalent test method approved by the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(33) "Premises" means any property, piece of land or real estate or building.

(34) "Public nuisance" means any condition of the atmosphere beyond the property line of the offending person which:

(a) affects, at the same time, an entire community or neighborhood, or any considerable number of persons (although the extent of the annoyance or damage inflicted upon individuals may be unequal), and

(b) is injurious to health, or offensive to the senses, or which causes or constitutes an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(35)(a) "Solid waste" means all putrescible and nonputrescible solid, semi-solid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; con-

struction, demolition or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, insulated wire; oil or petroleum products, or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluent, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands.

(c) This definition of "solid waste" is only applicable to the regulation of incinerators under the Montana Clean Air Act, Title 75, chapter 2, MCA, and regulations adopted pursuant thereto.

(36) "Solid waste incinerator" means any incinerator that incinerates solid waste.

(37) "Source" means any person, real property or personal property located on one or more contiguous or adjacent properties under the control of the same owner or operator which contributes or would contribute to air pollution, including associated control equipment that affects or would affect the nature, character, composition, amount or environmental impacts of air pollution.

(38) "Stack , vent, or roof monitor" means any flue, conduit, chimney, vent, or duct arranged to conduct emissions.

(39) "Total suspended particulate" means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

(40)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1- trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134);

1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

(41) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry for the disposal of wood.

(42) The definitions contained in 75-2-103, MCA, are applicable where appropriate. (History: Sec. 75-2-111, MCA; IMP, Title 75, chapter 2, MCA, Eff. 12/31/72; AMD, 1978 MAR p. 1727, Eff. 12/29/78; AMD, 1982 MAR p. 697, Eff. 4/16/82; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1986 MAR p. 2007, Eff. 12/12/86; AMD, 1988 MAR p. 826, Eff. 4/29/88; AMD, 1993 MAR p. 2919, Eff. 12/10/93.)

Rules 16.8.702 and 16.8.703 reserved

16.8.704 TESTING REQUIREMENTS (1) Any person or persons responsible for the emission of any air contaminant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department. Such emission or ambient tests shall include, but not be limited to, a determination of the nature, extent, and quantity of air contaminants which are emitted as a result of such operation at all sampling points designated by the department. These data shall be maintained for a period of not less than 1 year and shall be available for review by the department. Such testing and sampling facilities may be either permanent or temporary at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction or safe practice.

(2) All sources subject to the requirements of 40 CFR Part 51, Appendix P must install, calibrate, maintain, and operate equipment for continuously monitoring and recording emissions. All subject sources must have installed all necessary equipment and shall have begun monitoring and recording emissions data in accordance with Appendix P by January 31, 1988.

(3) The board hereby adopts and incorporates by reference 40 CFR Part 51, Appendix P, which is a federal agency regulation setting forth the continuous emission monitoring requirements for existing major stationary sources. A copy of 40 CFR Part 51, Appendix P may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1987 MAR p. 159, Eff. 2/14/87.)

16.8.705 MALFUNCTIONS (1) "Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment, or a process when it affects emissions, to operate in a normal manner. A failure caused entirely or in part by poor maintenance, careless operation, poor design, or any other preventable upset condition or preventable equipment breakdown is not a malfunction.

(2) The air quality bureau of the department must be notified promptly by phone (406-444-3454) whenever a malfunction occurs that can be expected to create emissions in excess of any applicable emission limitation, or to continue for a period greater than 4 hours. If telephone notification is not immediately possible, notification at the beginning of the next working day is acceptable. The notification must include the following information:

(a) identification of the emission points and equipment causing the excess emissions;

(b) magnitude, nature, and cause of the excess emissions;

(c) time and duration of the excess emissions;

(d) description of the corrective actions taken to remedy the malfunction and to limit the excess emissions;

(e) documentation that the air pollution control equipment, process equipment, or processes were at all times maintained and operated to the maximum extent practicable in a manner consistent with good practice for minimizing emissions;

(f) readings from any continuous emission monitor on the emission point and readings from any ambient monitors near the emission point.

(3) Upon receipt of notification pursuant to (2) above, the department shall promptly investigate and determine whether a malfunction has occurred.

(4) If a malfunction occurs and creates emissions in excess of any applicable emission limitation, the department may elect to take no enforcement action if:

(a) the owner or operator of the source submits the notification required by (2) above,

(b) the malfunction does not interfere with the attainment and maintenance of any state or federal ambient air quality standards, and

(c) the owner or operator of the source immediately undertakes appropriate corrective measures.

(5) Within 1 week after a malfunction has been corrected, the owner or operator must submit a written report to the department which includes:

(a) a statement that the malfunction has been corrected, the date of correction, and proof of compliance with all applicable air quality standards contained in this chapter;

(b) a specific statement of the causes of the malfunction; and

(c) a description of the preventive measures undertaken and/or to be undertaken to avoid such a malfunction in the future.

(6) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that a malfunction did occur.

(7) No person may falsely claim a malfunction has occurred or submit to the department information, pursuant to this rule, which is false. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 1201, Eff. 6/18/82.)

16.8.706 MALFUNCTIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; REP, 1982 MAR p. 1201, Eff. 6/18/82.)

16.8.707 CIRCUMVENTION (1) No person shall cause or permit the installation or use of any device or any means which, without resulting in reduction in the total amount of air contaminant emitted, conceals or dilutes an emission of air contaminant which would otherwise violate an air pollution control regulation.

(2) No equipment that may produce emissions shall be operated or maintained in such a manner that a public nuisance is created. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1985 MAR p. 1326, Eff. 9/13/85.)

16.8.708 INCORPORATIONS BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990);

(c) Where the board has adopted a section of the Montana Code Annotated (MCA) by reference, the reference in the board rule shall refer to the section of the MCA as found in the 1991 edition.

(d) Where the board has adopted another rule of the department or another agency of the state of Montana that appears in a different title or chapter of the Administrative Rules of Montana (ARM), the reference in this subchapter shall refer to the other rule in the ARM as such rule existed on June 24, 1993.

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 50, Appendix B, which contains the reference method for the determination of suspended particulate matter in the atmosphere (high-volume method).

(b) 40 CFR Part 50, Appendix J, which contains reference methods for the determination of particulate matter as PM-10 in the atmosphere;

(c) 40 CFR Part 51, Appendix M, which sets forth EPA reference emission source test methods for state programs to use in developing and implementing state implementation plans, including alternative methods for testing PM-10 emissions;

(d) 40 CFR Part 51, Appendix P, which sets forth EPA minimum emission monitoring requirements;

(e) 40 CFR Part 52, subpart BB, which sets forth the

implementation plan for control of air pollution in Montana;

(f) 40 CFR Part 53, which pertains to ambient air monitoring reference methods and equivalent methods;

(g) 40 CFR Part 60, Appendix A, which sets forth EPA reference emission source test methods for stationary sources, including test method 9, which sets forth a method for visual determination of the opacity of emissions from stationary sources;

(h) 40 CFR Part 60, Appendix B, which sets forth EPA performance specification and test procedures for continuous emission monitoring systems, including performance specification 1, which sets forth specifications and test procedures for opacity continuous emission monitoring systems in stationary sources;

(i) 40 CFR Part 61, Appendix B, which sets forth EPA reference emission source test methods for sources subject to national emission standards for hazardous air pollutants;

(j) 40 CFR Part 63 (56 FR 27369, June 13, 1991), which sets forth the protocol for field validation of emission concentrations from stationary sources;

(k) The Montana source testing protocol and procedures manual (July 1994 ed.), which is a department manual setting forth sampling and data collection, recording, analysis and transmittal requirements;

(l) The US environmental protection agency quality assurance manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV), which is a federal agency manual and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements;

(m) Section 7412(b)(1) of the Federal Clean Air Act, 42 U.S.C. 7401, et seq., which contains a list of substances designated as hazardous air pollutants;

(n) ARM 16.44.1101, which defines the class of activities subject to regulation under 75-10-405(2)(f) and 75-10-406, MCA, relating to boilers or industrial furnaces;

(o) Section 75-10-403(7), MCA, which sets forth the statutory definition of "hazardous waste";

(p) The Administrative Rules of Montana found at Title 16, chapter 44, subchapter 3, which set forth the rules pertaining to the identification and listing of hazardous waste.

(q) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, Montana 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a

copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. (History: Sec. 75-2-111, MCA; IMP, Title 75, chapter 2, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94.)

16.8.709 SOURCE TESTING PROTOCOL (1)(a) The requirements of this rule apply to any emission source testing conducted by the department, any source, or other entity as required by any rule in this chapter, or any permit or order issued pursuant to this chapter, or the provisions of the Montana Clean Air Act, 75-2-101, et seq., MCA.

(b) All emission source testing, sampling and data collection, recording, analysis, and transmittal must be performed as specified in the Montana source testing protocol and procedures manual, unless alternate equivalent requirements are determined by the department and the source to be appropriate, and prior written approval has been obtained from the department. If the use of an alternative test method requires approval by the administrator, that approval must also be obtained.

(c) Unless otherwise specified in the Montana source testing protocol and procedures manual or elsewhere in this chapter, all emission source testing must be performed as specified in any applicable sampling method contained in: 40 CFR Part 60, Appendix A; 40 CFR Part 60, Appendix B; 40 CFR Part 61, Appendix B; 40 CFR Part 51, Appendix M; 40 CFR Part 51, Appendix P, and; 40 CFR Part 63 (56 FR 27369, June 13, 1991). Such emission source testing must also be performed in compliance with the requirements of the US EPA quality assurance manual. Alternative equivalent requirements may be used if the department and the source have determined that such alternative equivalent requirements are appropriate, and prior written approval has been obtained from the department. If approval by the administrator of an alternative test method is required, that approval must also be obtained.

(d) Failure to comply with this rule shall constitute a violation of this rule, and may result in the partial or complete rejection by the department of the appropriate emission source testing data. The partial or complete rejection by the department of the appropriate emission source testing data may subsequently result in a determination by the department that a permit application is incomplete, that insufficient data is available to determine compliance with an emission limitation or standard and additional testing is necessary to demonstrate compliance, or that insufficient data is available to determine the correct fee required under subchapter 19 and additional testing is necessary.

(e) Any changes to the Montana source testing protocol

and procedures manual shall follow the appropriate rulemaking procedures. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

Sub-Chapter 8

Ambient Air Quality

16.8.801 BOARD POLICY IS REPEALED (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; Eff. 12/31/72; REP, 1980 MAR p. 2399, Eff. 8/15/80.)

Rule 16.8.802 reserved

16.8.803 STANDARDS IS REPEALED (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; Eff. 12/31/72; REP, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.804 SAMPLING AND ANALYTICAL PROCEDURES IS REPEALED (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; Eff. 12/31/72; REP, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.805 PURPOSE (1) In accordance with 75-2-102, MCA, of the Montana Clean Air Act, it is the primary purpose of this subchapter to establish ambient air quality standards which protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state, and facilitate the enjoyment of the natural attractions of this state. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.806 DEFINITIONS In this subchapter, the following words and phrases shall have the following meanings:

(1) "Act" means the Montana Clean Air Act.

(2) "Ambient air quality standards" means a permissible level of an air contaminant in the ambient air as defined by the maximum frequency with which a specified level may be exceeded or by a maximum level of an air contaminant in or on body or plant tissues.

(3) "Annual average" means an arithmetic average of any 4 consecutive valid calendar quarterly averages, where calendar quarterly averages are determined as specified in (a) and (b) below; except that for hourly data at least 6,570 valid hourly averages must be contained in the 4 consecutive calendar quarters.

(a) For hourly data, the calendar quarterly average is the arithmetic average of all valid hourly averages collected during the quarter, except that the minimum number of valid hourly averages necessary to determine a valid quarterly average is 65% of the hourly averages contained in the quarter.

(b) For 24-hour data, the calendar quarterly average is

the arithmetic average of all valid interval averages, except that the minimum number of valid interval averages necessary to determine a valid quarterly average is 80% of the interval averages contained in the quarter.

(4) "Approved equivalent method" means any method of measuring concentrations of air contaminants regulated in this subchapter which has been approved as an equivalent method by the US EPA pursuant to Title 40, Part 53, Code of Federal Regulations or which has been approved by the department. Methods approved by the department are kept on file and are available for inspection and copying.

(5) "Carbon monoxide" means the gas having the molecular composition of one carbon atom and one oxygen atom.

(6) "Department" means the department of health and environmental sciences.

(7) "Eight hour average" means the arithmetic average of all valid recorded values during any consecutive 8 hours but not less than 6 valid hourly averages.

(8) "Fluoride" means fluorine combined with one or more other substances.

(9) "Forage" means any plant part which is grazed or browsed.

(10) "Grams per square meter" (gm/m2) means a concentration numerically equal to the mass of an air contaminant (in grams) deposited on 1 square meter of surface.

(11) "Grazing season average" means, for each sample plot, an arithmetic average of all monthly averages for which sampling occurred in accordance with ARM 16.8.813. The minimum number of monthly averages shall be at least three for any sample plot.

(12) "Hourly average" means an arithmetic average of all valid values recorded between the first minute and sixtieth minute of the hour (e.g. 1:00 to 2:00), but not less than two-thirds of the data obtainable from the monitoring device during the hour, or an integral sample of more than 40 minutes.

(13) "Hydrogen fluoride" means the gas having the molecular composition of one fluorine atom and one hydrogen atom.

(14) "Hydrogen sulfide" means the gas having molecular composition of one sulfur atom and two hydrogen atoms.

(15) "Interval average" means the arithmetic average of all valid 24-hour averages collected during a specific scheduled sampling interval, except that the minimum number of valid 24-hour averages necessary to determine a valid interval average is one. If a scheduled sampling interval extends into 2 calendar quarters or two 90-day averaging periods the interval average shall be assigned to the calendar quarter or 90-day averaging period containing the start date of the interval.

(16) "Lead" means elemental lead or lead in combination

with any other substance.

(17) "Micrograms per cubic meter" (ug/m3) means a concentration numerically equal to the mass of an air contaminant present (in micrograms) in a 1 cubic meter of air, corrected to standard conditions.

(18) "Micrograms per gram" (ug/g) means a concentration numerically equal to the mass of an air contaminant (in micrograms) in 1 gram of dry material.

(19) "Monthly average" means the arithmetic average for a sample plot, taken for all applicable months in accordance with ARM 16.8.813 of all sample plot values of fluoride in or on forage samples collected. The minimum number of sample plot values must be two. The two sample plot values must be separated by at least a 12-day interval. Any number of sample plot values in excess of two for any month must be sampled at least X days from each other, where X is the integer value described by the following equation:

X = (30/Number of Sample Plot Values) - 2

Regardless of the number of sample plot values used to calculate a monthly average, at least one sample plot value must lie within 12 days of the end of the month.

(20) "Ninety-day average" means the arithmetic average of all valid interval averages recorded during any 90 consecutive days except that the minimum number of valid interval averages necessary to determine a valid 90-day average is 80% of the interval averages contained in the 90 days.

(21) "Nitrogen dioxide" means the gas having the molecular composition of one nitrogen atom and two oxygen atoms.

(22) "Ozone" means the gas having the molecular composition of three oxygen atoms.

(23) "Particle scattering coefficient" means the fractional change in the light intensity per meter of sight path due to particulate matter.

(24) "Parts per billion" (ppb) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in 1 billion volumes of air at the same conditions of temperature and pressure.

(25) "Parts per million" (ppm) means a concentration of an air contaminant numerically equal to the volume of a gaseous air contaminant present in 1 million volumes of air at the same conditions of temperature and pressure.

(26) "Sample plot value" means the results of any chemical analysis performed on a composite of forage clippings taken from a given sample plot on a specific sampling day.

(27) "Scheduled sampling interval" means the time period commencing with the start of one scheduled sampling day and ending at the start of the next scheduled sampling day, where "scheduled" means a predetermined routine sampling frequency. If the sampling schedule is changed during any calendar quarter

or 90-day averaging period the scheduled sampling interval shall be the largest possible time period based on any of the sampling schedules.

(28) "Standard conditions" means a temperature of 25° Celsius and a pressure of 760 millimeters of mercury.

(29) "Sulfur dioxide" means the gas having the molecular composition of one sulfur atom and two oxygen atoms.

(30) "Thirty-day average" means an arithmetic average of all recorded values during any consecutive 30 days, but not less than 20 valid 24-hour average recorded values or an integral sample of more than 20 days.

(31) "Twenty-four hour average" means an arithmetic average of each valid recorded value during any consecutive 24 hours, but not less than 18 valid hourly averages or an integral sample of more than 18 hours.

(32) "Valid recorded value" means data recorded, collected, transmitted and analyzed as required by ARM 16.8.811.

(33) "Year" means any 12 consecutive months. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1981 MAR p. 847, Eff. 8/14/81; AMD, 1986 MAR p. 2007, Eff. 12/12/86; AMD, 1988 MAR p. 826, Eff. 4/29/88.)

16.8.807 AMBIENT AIR MONITORING (1) The requirements of this rule apply to any ambient air monitoring performed by the department or any other entity as required by this chapter, including any ambient air monitoring performed as a result of any condition of any permit issued under subchapters 9 or 11 regardless of the date of issuance, or any other ambient air monitoring by any entity in order to determine compliance with subchapters 8 or 9.

(2) Except as otherwise provided in this chapter, or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual (July 1991 ed.), all sampling and data collection, recording, analysis, and transmittal, including but not limited to site selection, precision and accuracy determinations, data validation procedures and criteria, preventive maintenance, equipment repairs, and equipment selection must be performed as specified in the Montana Quality Assurance Manual (July 1991 ed.) except when more stringent requirements are determined by the department to be necessary pursuant to the U.S. Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV), or 40 CFR, Part 50 including appendices A through E, Part 53 including Appendix A, and Part 58 including Appendices A through G (July 1, 1990 ed.), at which time the latter two documents shall be adhered

to for the specific exception.

(3) Failure to comply with this rule is grounds to partially or totally invalidate the appropriate ambient air monitoring data which subsequently could result in:

(a) a violation of the conditions of a permit issued under subchapters 9 or 11; or

(b) a determination by the department that a permit application submitted under subchapters 9 or 11 is incomplete; or

(c) a determination that insufficient ambient air quality data is available to determine compliance with any ambient air quality standard contained in subchapter 8 or a prevention of significant deterioration increment contained in ARM 16.8.947.

(4) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (July 1991 ed.) and the US Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G (July 1, 1990 ed.), which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-201, 75-2-202, MCA; NEW, 1986 MAR p. 2007, Eff. 12/12/86; AMD, 1989 MAR p. 2059, Eff. 12/8/89; AMD, 1992 MAR p. 144, Eff. 1/31/92; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.808 ENFORCEABILITY (1) Any person who violates any provision of this subchapter shall be subject to the enforcement provisions of the act. Except as otherwise provided in this subchapter, the ambient air quality standards are applicable throughout the state of Montana. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.809 METHODS AND DATA (1) Except as otherwise provided in this subchapter or unless written approval is obtained from the department for an exemption from a specific part of the Montana Quality Assurance Manual (July 1991 ed.), all sampling and data collection, recording, analysis and transmittal, including but not limited to site selection, calibrations, precision and accuracy determinations must be performed as specified in the Montana Quality Assurance Manual (July 1991 ed.) except when more stringent requirements are contained in the US Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-

027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) or 40 CFR, Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G (July 1, 1990 ed.). Any valid recorded value at any one monitoring device which exceeds the applicable ambient air quality standard shall constitute an exceedance at that monitoring location but not at any other monitoring location and permitted exceedances shall be applicable to each monitoring location. If a valid recorded value comprises in whole or in part an exceedance of an ambient air quality standard, such recorded value shall not comprise in whole or in part a second exceedance of the same ambient air quality standard.

(2) The board hereby adopts and incorporates by reference the Montana Quality Assurance Manual (July 1991 ed.) and the US Environmental Protection Agency Quality Assurance Manual (EPA-600/9-76-005, revised Dec. 1984, Vol. I; EPA-600/4-77-027a, revised Jan. 1983, Vol. II; EPA-600/4-77-027b, revised Jan. 1982, Vol. III; and EPA-600/4-82-060, Feb. 1983, Vol. IV) and 40 CFR Part 50 including Appendices A-E, Part 53 including Appendix A, and Part 58 including Appendices A-G (July 1, 1990 ed.), which are state and federal agency manuals and regulations setting forth sampling and data collection, recording, analysis and transmittal requirements. A copy of these materials may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1986 MAR p. 2007, Eff. 12/12/86; AMD, 1989 MAR p. 2059, Eff. 12/8/89; AMD, 1992 MAR p. 144, Eff. 1/31/92.)

16.8.810 PROCEDURES FOR REVIEWING AND REVISING THE MONTANA QUALITY ASSURANCE MANUAL IS REPEALED (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-201, 75-2-202, MCA; NEW, 1986 MAR p. 2007, Eff. 12/12/86; REP, 1992 MAR p. 144, Eff. 1/31/92.)

16.8.811 AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE (1) No person shall cause or contribute to concentrations of carbon monoxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 23 parts per million, hourly average, not to be exceeded more than once per year.

(b) Eight-hour average: 9 parts per million, 8-hour average, not to be exceeded more than once per year.

(2) Measurement method: For determining compliance with this rule, carbon monoxide shall be measured by the non-dispersive infrared method, as more fully described in 40 CFR, part 50, appendix C (1979), or by an approved equivalent

method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

Rule 16.8.812 reserved

16.8.813 FLUORIDE IN FORAGE (1) No person may cause or contribute to concentrations of fluoride in or on forage which exceed the following standards:

(a) Monthly average: 50 micrograms per gram.

(b) Grazing season average: 35 micrograms per gram.

(2) The following sampling protocol must be applied:

(a) A sample plot must be located on an area which has forage being grazed by domestic livestock, or an area upon which forage is grown for use or commercial sale as a livestock feed. A sample plot must be located on a U.S. Geological Survey Map, or on an aerial photograph, for consistency of resampling. A written description of the plot location is acceptable, in the alternative, if the area can be verbally defined to the satisfaction of the department. Plot descriptions must be filed with the department's air quality bureau on standard site identification forms provided by the department. The location of sample plots must be approved by the department.

(b) The sample plot must be a minimum of one acre in area. At locations where forage growth is sparse, the sample plot must be large enough to allow a sampling capability, which meets the provisions of sample number and size, as described in this protocol under (e). Location of the plot must be chosen according to the predicted location of maximum fluoride impact. This location must be determined through modeling, historical monitoring data or other scientifically supportable procedures acceptable to the department. In the event that the predicted location of maximum concentration lies in an area unsuitable for sampling, another nearby plot suitable for sampling must be chosen. Locations where grasses are less than 3 cm in height or locations less than 100 meters from dirt roads or at locations less than 30 meters from paved roads must not be sampled.

(c) Sampling of each plot must be performed at least twice per month. The sampling schedule, if twice per month, must provide a minimum of 12 days between sampling periods. Should additional sampling be conducted, sampling intervals must be spaced in accordance with the definition of monthly average to represent the entire monthly forage fluoride uptake. Grazing season sampling must commence and terminate on the appropriate month following the constraints in (2)(a) and (2)(f) of this rule.

(d) Samples must be collected through the sample period by alternately using S, U, W, S, U, W etc., shaped transects, which traverse the full sample plot. Samples must be collected at regularly spaced distances as one progresses along the tran-

sect. Regardless of the plot size, a minimum of 25 clippings per plot must be collected. Clippings collected at each plot must be placed into a single composite sample. Samples must not be washed or in any way treated to remove particulate material from the plant.

(e) Approximately equal-sized clippings of at least 10 grams each must be cut from the forage in a given sample plot. The entire aerial portion above 3-cm of the base of the plant must be collected, unless the splashline is clearly above the 3-cm mark, in which case the vegetation must be cut slightly above the splashline. The clipping must include old and new leaves. Entire leaves must be collected and analyzed rather than only leaf tips or edges. An attempt must be made whenever possible to obtain plant tissue that is free of dew or other moisture.

(f) Only forage grasses must be sampled and only on sample plots on which livestock are actively grazing or sample plots on which forage is grown for use or commercial sale as livestock feed. In order to determine compliance with this rule, forage sampling must occur during months for which any livestock can obtain its minimum nutritional requirements by grazing the land. Sampling may not take place on forage grown for use or commercial sale as a livestock feed unless the sampling takes place during a month in which the forage is growing and the growth is expected to be harvested for use in livestock feeding.

(g) Plant tissue must be stored in the laboratory in labeled and ventilated kraft bags, or other acceptable containers, at temperatures of 2°-8°C. The sample tissue must be air dried at a temperature of 80°C (±5°C) for 24 to 48 hours prior to grinding. The tissue shall be milled to pass a 40-mesh sieve.

(h) The composite sample must be thoroughly mixed prior to any chemical analysis. Replicate aliquots are to be taken using a sample splitter or any other unbiased technique, and analyzed chemically for fluoride using the semi-automated method, as more fully described in Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T, except that the surfaces of the plant material must not be washed, or by an approved equivalent method.

(i) A 5-gram replicate aliquot from each plot must be forwarded to the department for quality control purposes. Another aliquot of the collected plant material must be saved for a minimum of 3 years in labeled air-tight plastic containers in the event additional analyses are required.

(j) The department hereby adopts and incorporates herein by reference Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T. Methods of Air Sampling and Analysis, Second Edition is a nationally recognized author-

ity setting forth the laboratory analytic procedure for chemical analysis of plant tissue. A copy of Methods of Air Sampling and Analysis, Second Edition (1977), Method No. 122-2-02-68T may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1981 MAR p. 850, Eff. 8/14/81.)

16.8.814 AMBIENT AIR QUALITY STANDARD FOR HYDROGEN SULFIDE (1) No person shall cause or contribute to concentrations of hydrogen sulfide in the ambient air which exceed the following standard:

(a) Hourly average: 0.05 parts per million, 1-hour average, not to be exceeded more than once per year.

(2) Measurement method: For determining compliance with this rule, hydrogen sulfide shall be measured by the methylene blue spectrophotometric method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977) Method P & CAM 126-6, or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.815 AMBIENT AIR QUALITY STANDARD FOR LEAD (1) No person shall cause or contribute to concentrations of lead in the ambient air which exceed the following standard:

(a) Ninety-day average: 1.5 micrograms per cubic meter of air, 90-day average, not to be exceeded.

(2) For determining compliance with this rule, lead shall be measured by the high-volume method as more fully described in 40 CFR Part 50, Appendix B, (July 1, 1987 ed.) and by the atomic absorption method as more fully described in 40 CFR Part 50, Appendix G, (July 1, 1987 ed.) or by an approved equivalent method.

(3) The department hereby adopts and incorporates herein by reference the following sections of the federal regulations:

(a) 40 CFR Part 50, Appendix B (July 1, 1987 ed.), which contains the reference method for the determination of suspended particulate matter in the atmosphere (high-volume method); and

(b) 40 CFR Part 50, Appendix G (July 1, 1987 ed.), which contains the reference method for the determination of lead in suspended particulate matter collected from ambient air.

(c) A copy of the above sections is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; or from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202,

MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1988 MAR p. 826, Eff. 4/29/88.)

16.8.816 AMBIENT AIR QUALITY STANDARDS FOR NITROGEN DIOXIDE (1) No person shall cause or contribute to concentrations of nitrogen dioxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 0.30 parts per million, one-hour average, not to be exceeded more than once per year;

(b) Annual average: 0.05 parts per million, annual average, not to be exceeded.

(2) Measurement method: For determining compliance with this rule, nitrogen dioxide shall be measured by the chemiluminescence method, as more fully described in Title 40, Part 50, (Appendix F), CFR (1979), or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.817 AMBIENT AIR QUALITY STANDARD FOR OZONE (1) No person shall cause or contribute to concentrations of ozone in the ambient air which exceed the following standard:

(a) Hourly average: 0.10 parts per million one-hour average, not to be exceeded more than once per year.

(2) Measurement method: For determining compliance with this rule, ozone shall be measured by the chemiluminescence method, as more fully described in Title 40, Part 50 (Appendix D), CFR (1979), or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

16.8.818 AMBIENT AIR QUALITY STANDARD FOR SETTLED PARTICULATE MATTER (1) No person shall cause or contribute to concentrations of particulate matter in the ambient air such that the mass of settled particulate matter exceeds the following standard:

(a) Thirty-day average: 10 grams per square meter, 30-day average, not to be exceeded.

(2) Measurement method: For determining compliance with this rule, settled particulate matter shall be measured by the dust fall method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977), Method No. 21101-0170T, or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

Rule 16.8.819 reserved

16.8.820 AMBIENT AIR QUALITY STANDARDS FOR SULFUR DIOXIDE (1) No person shall cause or contribute to concentrations

of sulfur dioxide in the ambient air which exceed any of the following standards:

(a) Hourly average: 0.50 parts per million, one-hour average, not to be exceeded more than 18 times in any 12 consecutive months;

(b) Twenty-four hour average: 0.10 parts per million, 24-hour average, not to be exceeded more than once per year, except that persons causing or contributing to ambient 24-hour average concentrations of sulfur dioxide that exceeded more than once 0.10 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.14 parts per million more than once per year;

(c) Annual average: 0.02 parts per million, annual average, not to be exceeded, except that persons causing or contributing to ambient annual concentrations of sulfur dioxide that exceeded 0.02 parts per million during 1985 must be considered in compliance with this rule if ambient concentrations do not exceed 0.03 parts per million.

(2) Measurement method: For determining compliance with this rule, sulfur dioxide shall be measured by the pararosaniline method as more fully described in Title 40, Part 50 (Appendix A), CFR (1979), or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1987 MAR p. 1482, Eff. 8/28/87.)

16.8.821 AMBIENT AIR QUALITY STANDARD FOR PM-10 (1) No person may cause or contribute to concentrations of PM-10 in the ambient air which exceed the following standards:

(a) Twenty-four hour average: 150 micrograms per cubic meter of air, 24-hour average, with no more than one expected exceedance per calendar year.

(b) Annual average: 50 micrograms per cubic meter of air, expected annual average, not to be exceeded.

(2) For the purpose of this rule, expected exceedance and expected annual average shall be determined in accordance with 40 CFR Part 50, Appendix K (52 FR 24667, July 1, 1987).

(3) For determining compliance with this rule, PM-10 shall be measured by an applicable reference method based on 40 CFR Part 50, Appendix J (52 FR 24664, July 1, 1987), and designated in accordance with 40 CFR Part 53 (52 FR 24727, July 1, 1987) or by an equivalent method designated in accordance with 40 CFR Part 53 (July 1, 1987 ed.).

(4) The department hereby adopts and incorporates herein by reference the following sections of the federal regulations:

(a) 40 CFR Part 50, Appendix J (52 FR 24664, July 1, 1987), which contains reference methods for the determination of particulate matter as PM-10 in the atmosphere;

(b) 40 CFR Part 50, Appendix K (52 FR 24667, July 1,

1987), which contains an interpretation of national ambient air quality standards for particulate matter; and

(c) 40 CFR Part 53 (52 FR 24727, July 1, 1987), which pertains to ambient air monitoring reference methods and equivalent methods.

(d) A copy of the above sections is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620; or from EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80; AMD, 1988 MAR p. 826, Eff. 4/29/88.)

16.8.822 AMBIENT AIR QUALITY STANDARD FOR VISIBILITY

(1) No person shall cause or contribute to concentrations of particulate matter such that the scattering coefficient of particulate matter in the ambient air exceeds the following standard:

(a) Annual average: 3×10^{-5} per meter, annual average, not to be exceeded.

(2) The provisions of (1) are applicable only in Class I areas as are designated under the Montana Clean Air Act rules, Prevention of Significant Deterioration of Air Quality, (ARM Title 16, chapter 8, subchapter 9) on the effective date of this rule. Areas redesignated Class I subsequent to the effective date of this rule shall be subject to the provisions of (1) only upon a finding by the board that visibility is an important attribute of such area.

(3) Measurement method: For determining compliance with this rule, visibility shall be measured by the integrating nephelometer method, as more fully described in "Methods of Air Sampling and Analysis, Second Edition" (1977) Method No. 11203-03-76T, as modified by the addition of a heated sample inlet line and green spectral sensitivity; or by an approved equivalent method. (History: Sec. 75-2-111, 75-2-202, MCA; IMP, Sec. 75-2-202, MCA; NEW, 1980 MAR p. 2399, Eff. 8/15/80.)

Sub-Chapter 9

Prevention of Significant Deterioration of Air Quality

16.8.901 DEFINITIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.902 REDESIGNATION IS REPEALED (History: Sec. 75-2-111, 75-2-203 MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

Rule 16.8.903 reserved

16.8.904 AMBIENT AIR INCREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.905 AMBIENT AIR LIMITS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.906 RESTRICTIONS ON AREA CLASSIFICATIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.907 EXCLUSIONS FROM INCREMENT CONSUMPTION IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

Rule 16.8.908 reserved

16.8.909 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATION IS REPEALED (History: 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.910 CONTROL TECHNOLOGY REVIEW IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.911 AIR QUALITY REVIEW IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA;

NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.912 MONITORING IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.913 ADDITIONAL IMPACT ANALYSES IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

Rule 16.8.914 reserved

16.8.915 EXEMPTIONS FROM IMPACT ANALYSIS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.916 AIR QUALITY MODELS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.917 STACK HEIGHTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.918 SOURCE INFORMATION IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

Rule 16.8.919 reserved

16.8.920 SOURCES IMPACTING FEDERAL CLASS I AREA--ADDITIONAL REQUIREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1979 MAR p. 242, Eff. 3/16/79; REP, 1983 MAR p. 71, Eff. 1/28/83.)

16.8.921 DEFINITIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1983 MAR p. 275, Eff. 4/1/83; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1988 MAR p. 826, Eff. 4/29/88; AMD, 1989 MAR p. 756, Eff. 6/16/89; AMD, 1990 MAR p. 1322, Eff. 7/13/90; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.922 DETERMINATION OF BEST AVAILABLE CONTROL TECHNOLOGY IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.923 AREA CLASSIFICATION IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.924 REDESIGNATION IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1983 MAR p. 275, Eff. 4/1/83; AMD, 1988 MAR p. 826, Eff. 4/29/88; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.925 AMBIENT AIR INCREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1988 MAR p. 826, Eff. 4/29/88; AMD, 1990 MAR p. 1322, Eff. 7/13/90; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.926 AMBIENT AIR LIMITS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.927 AIR QUALITY LIMITATIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1990 MAR p. 1322, Eff. 7/13/90; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.928 EXCLUSIONS FROM INCREMENT CONSUMPTION IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1990 MAR p. 1322, Eff. 7/13/90; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.929 REVIEW REQUIREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.930 PERMIT REVIEW--INFORMATION REQUIRED IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1983 MAR p. 275, Eff. 4/1/83; AMD, 1991 MAR p. 2606, Eff. 12/27/91; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.931 CONTROL TECHNOLOGY REVIEW IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.932 SOURCE IMPACT ANALYSIS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.933 PRECONSTRUCTION MONITORING IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.934 POST-CONSTRUCTION MONITORING IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.935 ADDITIONAL IMPACT ANALYSIS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.936 EXEMPTIONS FROM REVIEW IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1983 MAR p. 275, Eff. 4/1/83; AMD, 1988 MAR p. 826, Eff. 4/29/88; AMD, 1989 MAR p. 756, Eff. 6/16/89; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.937 AIR QUALITY MODELS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1987 MAR p. 744, Eff. 7/20/87; AMD, 1988 MAR p. 500, Eff. 3/11/88; AMD, 1989 MAR p. 756, Eff. 6/16/89; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.938 MONITORING AND STACK HEIGHTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.939 INNOVATIVE CONTROL TECHNOLOGY IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.940 SOURCES IMPACTING FEDERAL CLASS I AREA--ADDITIONAL REQUIREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR

p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.941 CLASS I VARIANCES--GENERAL IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; AMD, 1989 MAR p. 756, Eff. 6/16/89; AMD, 1990 MAR p. 1322, Eff. 7/13/90; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.942 CLASS I SULFUR DIOXIDE VARIANCE IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.943 EMISSION LIMITATIONS FOR PRESIDENTIAL OR GUBERNATORIAL VARIANCE IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, MCA; NEW, 1983 MAR p. 71, Eff. 1/28/83; REP, 1993 MAR p. 2919, Eff. 12/10/93.)

Rule 16.8.944 reserved

16.8.945 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with (b)-(d) of this section.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation. The department may determine that a different time period is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in ARM 16.8.1423 or 1424;

(b) The applicable Montana state implementation plan emissions limitation, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3)(a) "Baseline area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable in 40 CFR 81.327 in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 $\mu g/m^3$ (annual average) of the pollutant for which the minor source baseline date is established.

(b) Area redesignations under sec. 7407 of the FCAA to attainment or unclassifiable cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(i) establishes a minor source baseline date; or

(ii) is subject to 40 CFR 52.21 or regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation.

(c) Any baseline area established originally for the

total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with (21)(d) below.

(4)(a) "Baseline concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(i) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in (b) of this section; and

(ii) The allowable emissions of major stationary sources which commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(b) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(i) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(ii) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

(5) "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(6) "Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each pollutant subject to regulation under the FCAA, excluding hazardous air pollutants except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA, which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy impacts, environmental impacts (including but not limited to the effect of the control technology option on hazardous air pollutants), and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available

methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under ARM 16.8.1423 and 1424. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, any design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

(7) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1987.

(8) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(9) "Complete" means, in reference to an application for a permit, that the application contains all the information necessary for processing the application, except that designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

(10) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(11) "Emissions unit" means any part of a stationary

source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(12) "Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

(13) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(14) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(15) "High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

(16) "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

(17) "Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of congress.

(18) "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least ccmparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

(19) "Low terrain" means any area other than high terrain.

(20)(a) "Major modification" means any physical change in, or change in the method of operation of, a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA.

(b) Any net emissions increase that is significant for volatile organic compounds will be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair, and replacement;

(ii) Use of an alternative fuel or raw material by reason

of any order under secs. 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 USC sec. 791, et seq. (1988), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, 16 USC sec. 791a, et seq. (1988 & Supp. III 1991);

(iii) Use of an alternative fuel by reason of an order or rule under sec. 7425 of the FCAA;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or sec. 51.166; or

(B) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(vi) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or sec. 51.166; or

(vii) Any change in ownership at a stationary source.

(21)(a) "Major source baseline date" means:

(i) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(ii) In the case of nitrogen dioxide, February 8, 1988.

(b) "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or to regulations approved pursuant to 40 CFR 51.166 submits a complete application under the relevant regulation. The trigger date is:

(i) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(ii) In the case of nitrogen dioxide, February 8, 1988.

(c) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(i) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable in 40 CFR 81.327 for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

(ii) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the

case of a major modification, there would be a significant net emissions increase of the pollutant.

(d) Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the department, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

(22)(a) "Major stationary source" means:

(i) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA: fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) Notwithstanding the stationary source size specified in (a)(i), above, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA; or

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under (a)(i) or (ii), above, as a major stationary source if the change would constitute a major stationary source by itself.

(b) A major source that is major for volatile organic compounds will be considered major for ozone.

(c) The fugitive emissions of a stationary source may not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under secs. 7411 or 7412 of the FCAA.

(23) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the Montana state implementation plan.

(24)(a) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions

at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commenced, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under this subchapter, which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides which occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM-10 emissions may be used to evaluate the net emissions increase for PM-10.

(e) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(f) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is federally enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(g) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(25) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(26) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major

stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(27)(a) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)
Nitrogen oxides: 40 tpy
Sulfur dioxide: 40 tpy
Particulate matter: 25 tpy of particulate matter emissions
15 tpy of PM-10 emissions
Ozone: 40 tpy of volatile organic compounds
Lead: 0.6 tpy
Fluorides: 3 tpy
Sulfuric acid mist: 7 tpy
Total reduced sulfur (including H_2S): 10 tpy
Reduced sulfur compounds (including H_2S): 10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): $3.2 * 10^{-6}$ megagrams per year ($3.5 * 10^{-6}$ tons per year)
Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)

(b) "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the FCAA, that (a) above does not list, any emissions rate. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA.

(c) Notwithstanding (a) above, "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 $\mu g/m^3$ (24-hour

average).

(28) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA.

(29)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94.)

16.8.946 INCORPORATION BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR).

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR 51.102, which sets forth requirements for public hearings for state programs;

(b) 40 CFR Part 58, Appendix B, which sets forth quality assurance requirements for prevention of significant deterioration air monitoring;

(c) 40 CFR Part 60, which sets forth standards of performance for new stationary sources;

(d) 40 CFR Part 61, which sets forth emission standards for hazardous air pollutants;

(e) 40 CFR 81.327, which sets forth the air quality attainment status designations for Montana;

(f) The standard industrial classification manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy;

(g) The guidelines on air quality models (revised) (1986) (EPA publication no. 450/278-027R) and supplement A (1987).

(h) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, MT 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) (order no. PB 87-100012) and the guidelines on air quality models (revised) (1986) (EPA publication no. 450/278-027R) and supplement A (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94.)

16.8.947 AMBIENT AIR INCREMENTS (1) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
CLASS I	
Particulate matter:	
PM-10, annual arithmetic mean	4
PM-10, 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
CLASS II	
Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
CLASS III	
Particulate matter:	
PM-10, annual arithmetic mean	34
PM-10, 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

(2) For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94.)

16.8.948 AMBIENT AIR CEILINGS (1) No concentration of a pollutant shall exceed the concentration permitted under

either the applicable secondary or primary national ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.949 RESTRICTIONS ON AREA CLASSIFICATIONS (1) All of the following areas are designated Class I areas and may not be redesignated:

(a) Bob Marshall Wilderness Area;
(b) Anaconda Pintler Wilderness Area;
(c) Cabinet Mountains Wilderness Area;
(d) Gates of the Mountains Wilderness Area;
(e) Glacier National Park;
(f) Medicine Lake Wilderness Area;
(g) Mission Mountains Wilderness Area;
(h) Red Rock Lake Wilderness Area;
(i) Scapegoat Wilderness Area;
(j) Selway-Bitterroot Wilderness Area;
(k) UL Bend Wilderness Area; and
(l) Yellowstone National Park.

(2) Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this subchapter.

(3) The extent of the areas designated as Class I under (1) and (2) above shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(4) Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this subchapter.

(5) The following areas may be redesignated only as Class I or II:

(a) An area which, as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, a national primitive area, a national preserve, a national recreational area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore; and

(b) A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

(6) The following three areas have been designated as Class I by EPA and may be redesignated to another class only by EPA:

(a) Northern Cheyenne Reservation;
(b) Flathead Reservation; and
(c) Fort Peck Reservation. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA;

NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.950 EXCLUSIONS FROM INCREMENT CONSUMPTION (1) The following concentrations will be excluded in determining compliance with a maximum allowable increase:

(a) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under secs. 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. sec. 791, et seq. (1988), over the emissions from such sources before the effective date of such an order;

(b) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 U.S.C. sec. 791a, et seq. (1988 & Supp. III 1991), over the emissions from such sources before the effective date of such plan;

(c) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources meeting the criteria specified in (3) below.

(2) With respect to (a) or (b) above, no exclusion of such concentrations shall apply more than five years after the effective date of the order to which (a) of this rule refers, or the plan to which (b) of this rule refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) For purposes of excluding concentrations pursuant to (1)(e) of this rule:

(a) The time period for a temporary increase in emissions may not exceed two years and is not renewable.

(b) No emissions increase from a stationary source would be allowed which would:

(i) Impact a Class I area or an area where an applicable increment is known to be violated; or

(ii) Cause or contribute to the violation of a national ambient air quality standard. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.951 REDESIGNATION (1) All areas of the state (except as otherwise provided under ARM 16.8.949) are designated Class II. Redesignation (except as otherwise precluded by ARM 16.8.949) shall be subject to the redesignation procedures of this rule. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body, as required by 40 CFR 51.166(g)(4).

(2) The department may submit to the administrator a proposal to redesignate areas of the state Class I or Class II, provided that:

(a) At least one public hearing has been held in accordance with procedures established in 40 CFR 51.102;

(b) Other states, Indian governing bodies, and federal land managers whose lands may be affected by the proposed redesignation were notified at least 30 days prior to the public hearing;

(c) A discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation, was prepared and made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contained appropriate notification of the availability of such discussion;

(d) Prior to the issuance of notice respecting the redesignation of an area that includes any federal lands, the department has provided written notice to the appropriate federal land manager and afforded adequate opportunity (not in excess of 60 days) to confer with the department respecting the redesignation and to submit written comments and recommendations. In redesignating any area with respect to which any federal land manager had submitted written comments and recommendations, the department shall have published a list of any inconsistency between such redesignation and such comments and recommendations (together with the reasons for making such redesignation against the recommendation of the federal land manager); and

(e) The department has proposed the redesignation after consultation with the elected leadership of any local governmental bodies located within the area covered by the proposed redesignation.

(3) Any area other than an area to which ARM 16.8.949 refers may be redesignated as Class III if:

(a) The redesignation would meet the requirements of (2) above;

(b) The redesignation, except any established by an Indian governing body, has been specifically approved by the governor, after consultation with the appropriate committees of the legislature (if it is in session, or with the leadership of the legislature, if it is not in session), and if the local governmental bodies representing a majority of the residents of

the area to be redesignated enact ordinances or regulations (including resolutions where appropriate) concurring in the redesignation;

(c) The redesignation would not cause, or contribute to, a concentration of any air pollutant which would exceed any maximum allowable increase permitted under the classification of any other area or any national ambient air quality standard; and

(d) Any permit application for any major stationary source or major modification subject to ARM 16.8.955, which could receive a permit under this subchapter only if the area in question were redesignated as Class III, and any material submitted as part of that application, were available, as was practicable, for public inspection prior to any public hearing on redesignation of any area as Class III.

(4) If the administrator disapproves any proposed area designation, the classification of the area will be that which was in effect prior to the proposed redesignation which was disapproved, and the state may resubmit the proposal after correcting the deficiencies noted by the administrator. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.952 STACK HEIGHTS (1) The degree of emission limitation required for control of any air pollutant under this subchapter may not be affected in any manner by:

(a) So much of a stack height, not in existence before December 31, 1970, as exceeds good engineering practice; or

(b) Any other dispersion technique not implemented before December 31, 1970. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.953 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) No major stationary source or major modification shall begin actual construction unless, as a minimum, requirements contained in ARM 16.8.954 through 16.8.962 have been met. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) shall, if applicable, still be required to obtain an air quality preconstruction permit and comply with all applicable requirements of this subchapter.

(2) The requirements contained in ARM 16.8.954 through 16.8.962 shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the FCAA that it would emit, except as this subchapter would otherwise allow. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more

general pollutants listed in sec. 7408(a)(1) of the FCAA, or must be considered in the BACT analysis.

(3) The requirements contained in ARM 16.8.954 through 16.8.962 apply only to any major stationary source or major modification that would be constructed in an area which is designated as attainment or unclassifiable under 40 CFR 81.327, except that the requirements contained in ARM 16.8.954 through 16.8.962 do not apply to a particular major stationary source or major modification if:

(a) The major stationary source would be a nonprofit health or nonprofit educational institution or a major modification that would occur at such an institution; or

(b) The source or modification is a portable stationary source which has previously received a permit under requirements contained in ARM 16.8.954 through 16.8.962, but only if the source proposes to relocate and emissions at the new location would be temporary, the emissions from the source would not exceed its allowable emissions and would impact no Class I area and no area where an applicable increment is known to be violated, and reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice must be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department.

(c) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and such source does not belong to any of the following categories:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;

(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under sec. 7411 or 7412 of the FCAA.

(4) The requirements contained in ARM 16.8.954 through 16.8.962 do not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment under 40 CFR 81.327.

(5) The requirements contained in ARM 16.8.955, 16.8.957, and 16.8.959 do not apply to a proposed major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from a new source, or the net emissions increase of that pollutant from a modification, would be temporary and impact no Class I area and no area where an applicable increment is known to be violated.

(6) The requirements contained in ARM 16.8.955, 16.8.957, and 16.8.959 as they relate to any maximum allowable increase for a Class II area do not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each pollutant subject to regulation under the FCAA from the modification after the application of best available control technology would be less than 50 tons per year. This does not include hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 16.8.957, with respect to monitoring for a particular pollutant, if:

(a) The emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:
(i) Carbon monoxide--575 $\mu g/m^3$, 8-hour average;
(ii) Nitrogen dioxide--14 $\mu g/m^3$, annual average;
(iii) Particulate matter--10 $\mu g/m^3$ PM-10, 24-hour average;

(iv) Sulfur dioxide--13 $\mu g/m^3$, 24-hour average;

(v) Ozone--No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to this subchapter would be required to perform an ambient impact analysis, including the gathering of ambient air quality data;

(vi) Lead--0.1 $\mu g/m^3$, 3-month average;

(vii) Fluorides--0.25 $\mu g/m^3$, 24-hour average;

(viii) Total reduced sulfur--10 $\mu g/m^3$, 1-hour average;

(ix) Reduced sulfur compounds--10 $\mu g/m^3$, 1-hour average; or

(b) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in (7)(a) of this rule; or

(c) The pollutant is not listed in (7)(a) of this rule. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94.)

16.8.954 CONTROL TECHNOLOGY REVIEW (1) A major stationary source or major modification shall meet each applicable emissions limitation under the Montana state implementation plan and each applicable emission standard and standard of performance under ARM 16.8.1423 and 16.8.1424.

(2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the FCAA that it would have the potential to emit in significant amounts, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants.

(3) A major modification shall apply best available control technology for each pollutant subject to regulation under the FCAA for which it would be a significant net emissions increase at the source, excluding hazardous air pollutants, except to the extent that such hazardous air pollutants are regulated as constituents of more general pollutants listed in sec. 7408(a)(1) of the FCAA. In evaluating the environmental impacts of any control technology option, the BACT analysis shall consider all pollutants, including hazardous air pollutants. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(4) For phased construction projects, the determination of best available control technology will be reviewed and

modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.955 SOURCE IMPACT ANALYSIS (1) The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary emissions), would not cause or contribute to air pollution in violation of any national ambient air quality standard in any air quality control region or any applicable maximum allowable increase over the baseline concentration in any area. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.956 AIR QUALITY MODELS (1) All estimates of ambient concentrations required under this subchapter must be based on the applicable air quality models, data bases, and other requirements specified in the guideline on air quality models (revised) (1986) (EPA publication 450/278-027R) and supplement A (1987).

(2) Where an air quality impact model specified in the guideline on air quality models (revised) (1986) and supplement A (1987) are inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with ARM 16.8.961. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.957 AIR QUALITY ANALYSIS (1) Any application for a permit pursuant to this subchapter shall contain an analysis of ambient air quality in the area that the emissions from the major stationary source or major modification would affect.

(2) For a major stationary source, the analysis shall address each pollutant that it would have the potential to emit in a significant amount.

(3) For a major modification, the analysis shall address

each pollutant for which it would result in a significant net emissions increase.

(4) With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(5) With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(6) The continuous air monitoring data that is required under this rule shall have been gathered over a period of one year and shall represent the year preceding receipt of the application, except that, if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than 1 year (but not to be less than 4 months), the data that is required shall have been gathered over at least that shorter period.

(7) The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of subchapter 17 may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under (1) above.

(8) The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

(9) The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR Part 58, Appendix B, during the operation of monitoring stations for purposes of satisfying this rule. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.958 SOURCE INFORMATION (1) The owner or operator of a proposed source or modification shall submit the permit application fee required pursuant to ARM 16.8.1905 and all information necessary to perform any analysis or make any determination required under procedures established in accordance with this subchapter.

(2) Such information shall include the following:

(a) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing its

design and plant layout;

(b) A detailed schedule for construction of the source or modification; and

(c) A detailed description as to what system of continuous emission reduction is planned by the source or modification, emission estimates, and any other information as necessary to determine that best available control technology as applicable would be applied.

(3) Upon request of the department, the owner or operator shall also provide information regarding the following:

(a) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(b) The air quality impacts and the nature and extent of any or all general commercial, residential, industrial and other growth which has occurred since August 7, 1977, in the area the source or modification would affect. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.959 ADDITIONAL IMPACT ANALYSES (1) The owner or operator shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

(2) The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.960 SOURCES IMPACTING FEDERAL CLASS I AREAS--ADDITIONAL REQUIREMENTS (1) The department shall transmit to the administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the administrator of every action related to the consideration of such permit.

(2) The federal land manager and the federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the administrator, whether a proposed source or modification would have an adverse impact on such values.

(3) Federal land managers with direct responsibility for management of Class I lands may present to the department,

after reviewing the department's preliminary determination required under ARM 16.8.1107, a demonstration that the emissions from the proposed source or modification would have an adverse impact on the air quality-related values (including visibility) of any federal mandatory Class I lands, notwithstanding that the change in air quality resulting from emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the department concurs with such demonstration, the department may not issue the permit.

(4) The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source would have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may, provided that applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over the minor source baseline concentration for such pollutants:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
Particulate matter:	
PM-10, annual arithmetic mean	17
PM-10, 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

(5) The owner or operator of a proposed source or modification which cannot be approved under procedures developed pursuant to (4) of this rule may seek to obtain a sulfur dioxide variance from the governor.

(a) The owner or operator of a proposed source or modification must demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours

or less applicable to any Class I area and, in the case of federal mandatory Class I areas, that a variance under this clause would not adversely affect the air quality-related values of the area (including visibility).

(b) The governor, after consideration of the federal land manager's recommendation (if any) and subject to the concurrence of the federal land manager, may grant, after notice and an opportunity for a public hearing, a variance from such maximum allowable increase.

(c) If the federal land manager does not concur in the governor's recommendations, the recommendations of the governor and the federal land manager shall be transferred to the president, and the president may approve the governor's recommendation if the president finds that such variance is in the national interest.

(d) If such a variance is granted under this rule, the department may issue a permit to such source or modification in accordance with provisions developed pursuant to (6) of this rule, provided that the applicable requirements of the plan are otherwise met.

(6) In the case of a permit issued under procedures developed pursuant to (5) of this rule, the source or modification shall comply with emission limitations as may be necessary to assure that emissions of sulfur dioxide from the source or modification would not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which would exceed the following maximum allowable increases over the baseline concentration and to assure that such emissions would not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

MAXIMUM ALLOWABLE INCREASE
[Micrograms per cubic meter]

PERIODS OF EXPOSURE	Terrain Areas Low	High
24-hr maximum	36	62
3-hr maximum	130	221

(History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2829, Eff. 10/28/94.)

16.8.961 PUBLIC PARTICIPATION (1) The department shall notify all applicants in writing within 30 days of the date of receipt of an application as to the completeness of the

application or any deficiency in the application or information submitted as provided in ARM 16.8.1107. In the event of such a deficiency, the date of receipt of the application will be the date on which the department received all required information unless the department notifies the applicant in writing within 30 days thereafter that the application is still incomplete. This, and any subsequent notice of incompleteness shall follow the same form and requirements as the original notice of incompleteness.

(2) In accordance with ARM 16.8.1107, the department shall:

(a) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved;

(b) Make available, in at least one location in each region in which the proposed source would be constructed, a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination;

(c) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment;

(d) Send a copy of the notice of public comment to the applicant, the administrator, and to officials and agencies having cognizance over the location where the proposed construction would occur, including any local air pollution control agencies, the chief executives of the city and county where the source would be located, any comprehensive regional land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification;

(e) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations;

(f) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification;

(g) Make a final determination whether construction should be approved, approved with conditions, or disapproved; and

(h) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the source or modification. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.962 SOURCE OBLIGATION (1) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions and requirements under local, state or federal law.

(2) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of ARM 16.8.954-16.8.963 shall apply to the source or modification as though construction had not yet commenced on the source or modification. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.963 INNOVATIVE CONTROL TECHNOLOGY (1) An owner or operator of a proposed major stationary source or major modification may request the department approve a system of innovative control technology.

(2) The department may, with the consent of the governor of any other affected state, determine that the source or modification may employ a system of innovative control technology, if:

(a) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(b) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under ARM 16.8.954(2), by a date specified by the department, provided that such date may not be later than four years from the time of start-up or seven years from permit issuance;

(c) The source or modification would meet the requirements equivalent to those in ARM 16.8.954 and 16.8.955, based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department;

(d) The source or modification would not, before the date specified by the department, cause or contribute to any violation of an applicable national ambient air quality standard or impact any area where an applicable increment is known to be

violated;

(e) All other applicable requirements including those for public participation have been met; and

(f) The provisions of ARM 16.8.960 (relating to Class I areas) have been satisfied with respect to all periods during the life of the source or modification.

(3) The department shall withdraw any approval to employ a system of innovative control technology made under this subchapter if:

(a) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate;

(b) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(c) The department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

(4) If a source or modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with (3) of this rule, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

Sub-Chapter 10

Visibility Impact Assessment

16.8.1001 APPLICABILITY--VISIBILITY REQUIREMENTS

(1) This subchapter is applicable to the owner or operator of a proposed major stationary source, as defined by ARM 16.8.945(22), or of a source proposed for a major modification, as defined by ARM 16.8.945(20) proposing to construct such a source or modification after July 1, 1985, in any area within the state of Montana designated as attainment, unclassified, or nonattainment, in accordance with 40 CFR 81.327. The requirements of this subchapter shall be integrated with the requirements of ARM Title 16, chapter 8, subchapters 9 (Prevention of Significant Deterioration of Air Quality) and 11 (Permit, Construction and Operation of Air Contaminant Sources).

(2) The board hereby adopts and incorporates by reference 40 CFR 81.327 which is a federal agency rule setting forth attainment status designation for Montana pursuant to section 107 of the Federal Clean Air Act. A copy of 40 CFR 81.327 may be obtained from the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901. (History: Sec. 75-2-111, 75-2-203 MCA; IMP, Sec. 75-2-203, 75-2-204, and 75-2-211 MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1002 DEFINITIONS For the purposes of this subchapter:

(1) "Federal Class I area" means those areas listed in ARM 16.8.949(1) and any other federal land that is classified or reclassified as Class I.

(2) "Adverse impact on visibility" means visibility impairment which the department determines does or is likely to interfere with the management, protection, preservation, or enjoyment of the visual experience of visitors within a federal Class I area. The determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with times of visitor use of the federal Class I area, and the frequency and occurrence of natural conditions that reduce visibility.

(3) "Visibility impairment" means any humanly perceptible change in visual range, contrast or coloration from that which would have existed under natural conditions. Natural conditions include fog, clouds, windblown dust from natural sources, rain, naturally ignited wildfires, and natural aerosols. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1003 VISIBILITY IMPACT ANALYSIS (1) The owner or operator of a major stationary source or modification as described in ARM 16.8.1001, shall demonstrate that the actual emissions [as defined by ARM 16.8.945(1)] from the major source or modification (including fugitive emissions) will not cause or contribute to adverse impact on visibility within any federal Class I area or the department shall not issue a permit.

(2) The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to support any analysis or demonstration required by these rules pursuant to ARM 16.8.1105. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1004 VISIBILITY MODELS (1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988). Equivalent models may be substituted if approved by the department.

(2) The board hereby adopts and incorporates by reference "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) which is a federal agency publication setting forth methods by which estimates of visibility impairment may be made. A copy of "Workbook for Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) is available for public review and copying at the Air Quality Division, Department of Environmental Quality, Cogswell Building, PO Box 200901, Helena, MT 59620-0901. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1992 MAR p. 2741, Eff. 12/25/92.)

16.8.1005 NOTIFICATION OF PERMIT APPLICATION (1) Where a proposed major stationary source or major modification will impact or may impact visibility within a federal Class I area, the department shall provide written notice to the environmental protection agency and to the appropriate federal land managers. Notification shall be in writing, include all information relevant to the permit application including an analysis of the anticipated impacts on visibility in any federal Class I area, and be within 30 days of the receipt of the application.

(2) Where the department receives advance notification of a permit application of a source that may affect federal Class I area visibility, the department will notify all affected federal land managers within 30 days of such advance notice. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203,

75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85.)

16.8.1006 ADVERSE IMPACT AND FEDERAL LAND MANAGER (1) Federal land managers may present to the department, after the preliminary determination required under ARM 16.8.1107(2), a demonstration that the emissions from the proposed source or modification may cause or contribute to adverse impact on visibility in any federal Class I area, notwithstanding that the air quality change resulting from the emissions from such source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increment defined in ARM 16.8.947 (PSD) for a federal Class I area.

(2) The department will consider the comments of the federal land manager in its determination of whether adverse impact on visibility may result. Should the department determine that such impairment may result, a permit for the proposed source will not be granted.

(3) Where the department finds such an analysis does not demonstrate to the satisfaction of the department that an adverse impact on visibility will result, the department will provide written notification to the affected federal land manager within five days of the department's final decision on the permit. The notification will include an explanation of the department's decision or give notice as to where the explanation can be obtained. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1007 VISIBILITY MONITORING (1) The owner or operator of a proposed major stationary source or major modification shall submit with the application an analysis of existing visibility in or immediately adjacent to the federal Class I area potentially impacted by the proposed project. The validity of the analysis shall be determined by the department.

(2) As necessary to establish visibility conditions within the mandatory Class I area prior to construction and operation of the source or modification, the analysis shall include a collection of continuous visibility monitoring data. Such data shall relate to and shall have been gathered over the year preceding receipt of the complete application, except that if the department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than 1 year, the data that is required must have been gathered over at least that shorter period. Where applicable, the owner or operator may demonstrate that existing visibility monitoring data may be sufficient.

(3) Pursuant to the requirements of this subchapter, the owner or operator of the source shall submit a preconstruction

visibility monitoring plan prior to the filing of a permit application. Within 30 days, the department must, after consultation with the affected federal land manager, review and either approve the monitoring program or specify the changes necessary for approval. If the department fails to act within the 30 days, the monitoring program shall be deemed approved.

(4) The owner or operator of a proposed major stationary source or major modification, after construction has been completed, shall conduct such visibility monitoring as the department may require as a permit condition to establish the effect the source has on visibility conditions within the mandatory Class I area being impacted.

(5) The department may waive the requirements of ARM 16.8.1007(1), (2), and (3) if the value of "V" in the equation below is less than 0.50 or, if for any other reason which can be demonstrated to the satisfaction of the department, an analysis of visibility is not necessary.

$$V = (\text{Emissions})^{\frac{1}{2}} \div \text{Distance}$$

where: Emissions = emissions from the major stationary source or modification of nitrogen oxides, particulate matter, or sulfur dioxide, whichever is highest, in tons per year.

Distance = distance, in kilometers, from the proposed major stationary source or major modification to each federal Class I area.

(History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-204, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1988 MAR p. 826, Eff. 4/29/88.)

16.8.1008 ADDITIONAL IMPACT ANALYSIS (1) The owner or operator of a proposed major stationary source or major modification subject to the requirements of ARM 16.8.959 (PSD) shall provide a visibility impact analysis of the visibility impact likely to occur as a result of the major source or major modification and as a result of general commercial, residential, industrial, and other growth associated with the source or major modification. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, 75-2-203, 75-2-204, 75-2-211, MCA; NEW, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

Sub-Chapter 11

Permit, Construction and Operation of Air Contaminant Sources

16.8.1101 DEFINITIONS For the purpose of this subchapter:

(1) "New or altered source or stack" means a source or stack associated with a source which has not been constructed or upon which construction has not commenced prior to March 16, 1979. However, if the owner or operator of a source or stack has not commenced construction prior to March 16, 1979, but the owner or operator has received a permit from the department or the board, then the source or stack shall not be considered a new or altered source or stack.

(2) "Existing source or stack" means a source or stack associated with a source which is in existence and operating or capable of being operated or which has a permit from the department or the board on March 16, 1979.

(3) "Owner or operator" means the owner of a source or stack associated with a source or the authorized agent of the owner, or the person who is responsible for the overall operation of the source or stack.

(4) "Construct" or "construction" means on-site fabrication, erection or installation of a source or control equipment, including a reasonable period for startup and shakedown.

(5) "Best available control technology" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each pollutant subject to regulation under the federal Clean Air Act as amended August 7, 1977 or the Montana Clean Air Act, which would be emitted from any proposed stationary source or modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such contaminant. In no event shall application of the best available control technology result in emission of any contaminant which would exceed the emissions allowed by any applicable standard under ARM 16.8.1423 and 16.8.1424. If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction

achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(6) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects:

(a) the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under ARM 16.8.1423 and 16.8.1424.

(7) "Potential to emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(8) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a stationary source, but do not come from the stationary source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source which causes the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from trains coming to or from the stationary source;

(b) Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the stationary source.

(9) "Major emitting facility" means a stationary source or stack associated with a source which directly emits, or has the potential to emit, 100 tons per year of any air pollutant, including fugitive emissions, regulated under the Montana Clean Air Act. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1989 MAR p. 756, Eff. 6/16/89.)

16.8.1102 WHEN PERMIT REQUIRED--EXCLUSIONS (1) Except as hereafter specified, no person shall construct, install, alter or use any air contaminant source or stack associated with any source without first obtaining a permit from the department or the board. A permit is not required for the following:

(a) Residential, institutional, and commercial fuel burning equipment of less than:

(i) 10,000,000 BTU/hr heat input if burning liquid or gaseous fuels, or

(ii) 5,000,000 BTU/hr heat input if burning solid fuel;

(b) residential and commercial fireplaces, barbecues and similar devices for recreational, cooking or heating use;

(c) motor vehicles, trains, aircraft and other such self-propelled vehicles;

(d) laboratory equipment used exclusively for chemical or physical analysis;

(e) food service establishments;

(f) any activity or equipment associated with the use of agricultural land or the planting, production, harvesting or storage of agricultural crops (this exclusion does not apply to the processing of agricultural products by commercial businesses);

(g) ventilating systems used in buildings to house animals;

(h) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power and lighting are temporarily unobtainable;

(i) any activity or equipment associated with the construction, maintenance, alteration or use of roads, except for stationary sources, including but not limited to, rock crushers and asphalt plants, and roads associated with a source that is otherwise required to obtain a permit under this subchapter;

(j) agricultural and forest prescription fire activities (the adoption of this exclusion does not exempt such activities from regulation under ARM 16.8.1301 through 16.8.1307, Open Burning Restrictions);

(k) drilling rig stationary engine and turbines which do not have the potential to emit more than 100 tons per year of any pollutant regulated under the Montana Clean Air Act;

(l) all other sources and stacks not specifically excluded which do not have the potential to emit more than 25 tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter;

(m) a new stack or other source of airborne lead contamination whose potential to emit lead is less than 5 tons per year; and

(n) an alteration or modification of an already constructed stack or other source of lead contamination which

results in an increase in the maximum potential of the source or stack to emit airborne lead contaminants by an amount less than 0.6 tons per year;

(o) asphalt concrete plants and mineral crushers which do not have the potential to emit more than 5 tons per year of any pollutant, other than lead, for which a rule has been adopted in this chapter. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1982 MAR p. 697, Eff. 4/16/82; AMD, 1984 MAR p. 503, Eff. 3/30/84; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1103 EMISSION CONTROL REQUIREMENTS (1) The owner or operator of a new or altered source for which an air quality permit is required by this subchapter shall install on the new or altered source the maximum air pollution control capability which is technically practicable and economically feasible, except that:

(a) best available control technology shall be utilized; and

(b) the lowest achievable emission rate shall be met to the extent and by such sources as may be required by the Federal Clean Air Act, as amended on August 7, 1977.

(2) The owner or operator of a new or altered source for which a permit is required by this subchapter shall operate all equipment to provide the maximum air pollution control for which it was designed. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1989 MAR p. 756, Eff. 6/16/89.)

16.8.1104 EXISTING SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (1) The owner or operator of an existing source or stack which was not in existence on November 23, 1968, shall apply for an air quality permit on or before January 1, 1981. This section does not relieve the owner or operator of an existing source or stack from complying with the application requirements of ARM 16.8.1105 if the owner or operator intends to alter, reconstruct or use the existing source or stack in a manner that would require the submission of an application for an air quality permit for a new or altered source or stack.

(2) The owner or operator of an existing source for which an air quality permit is required by this subchapter shall apply for an air quality permit on forms available from the department and shall be subject to the signature requirements of ARM 16.8.1105(1). The information to be submitted shall include the following:

(a) Any information described in ARM 16.8.1105(2) which was not submitted as a part of any previous permit application

reviewed by the department;

(b) Any information relating to the matters described in ARM 16.8.1105(2) which has changed or is no longer applicable; and

(c) A certification by the applicant that the source or stack is being operated in compliance with the conditions of an existing permit if one has been issued.

(3) Nothing in this rule shall require an applicant to submit information already filed with the department. If the applicant believes information has already been submitted to the department, the applicant shall so indicate and, wherever possible, shall specify the date upon which the information was submitted. Any information so submitted shall be considered part of the application. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1105 NEW OR ALTERED SOURCES AND STACKS--PERMIT APPLICATION REQUIREMENTS (1) The owner or operator of a new or altered source shall, not later than 180 days before construction begins, or if construction is not required not later than 120 days before installation, alteration or use begins, submit an application for an air quality permit on an application form provided by the department. The air quality permit, if granted, shall authorize the construction and operation of the source subject to the conditions in the permit and to the requirements of this subchapter. The application form shall contain a certification by the person signing the application that all information contained therein is true. An unsigned or improperly signed application shall be considered incomplete. The following persons are authorized to sign an application on behalf of the owner or operator of a new or altered source or stack:

(a) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his authorized representative, if that representative is responsible for the overall operation of the source or stack;

(b) An application submitted by a partnership or a sole proprietorship must be signed by a general partner or the proprietor respectively;

(c) An application submitted by a municipal, state, federal or other public agency shall be signed by either a principal executive officer, appropriate elected official or other duly authorized employee; and

(d) An application submitted by an individual must be signed by the individual or his authorized agent.

(2) The application for an air quality permit to construct a new or altered source or stack shall include the fol-

lowing:

(a) A map and diagram showing the location of the proposed new or altered source and each stack associated with the source, the property involved, the height and outline of the buildings associated with the new or altered source, and the height and outline of each stack associated with the new or altered source;

(b) A description of the new or altered source including data on expected production capacity, raw materials and major equipment components;

(c) A description of the control equipment to be installed;

(d) A description of the composition, volume and temperatures of the effluent stream, including the nature and extent of air contaminants emitted, quantities and means of disposal of collected contaminants, and the air quality relationship of these factors to conditions created by existing sources or stacks associated with the new or altered source or stack;

(e) Normal and maximum operating schedules;

(f) Adequate drawings, blueprints, specifications or other information to show the design and operation of the equipment involved;

(g) Process flow diagrams containing material balances;

(h) A detailed schedule of construction or alteration of the source or stack;

(i) A description of the shakedown procedures and time frames that will be used at the source or stack;

(j) Such other information requested by the department which is necessary to review the application and determine whether the new or altered source will comply with applicable standards and rules; and

(k) The appropriate air quality permit application fee required pursuant to ARM 16.8.1905.

(3) The owner or operator of a new or altered source shall, before construction is scheduled to end as specified in the air quality permit, submit additional information on a form provided by the department. The information to be submitted shall include the following:

(a) Any information relating to the matters described in (2) of this rule which has changed or is no longer applicable; and

(b) A certification by the applicant that the new or altered source or stack has been constructed in compliance with the air quality permit.

(4) Nothing in this section shall require an applicant to submit information already filed with the department. If the applicant believes information has already been submitted to the department, the applicant shall so indicate and, wherever possible, shall specify the date upon which the information was

submitted. Any information so submitted shall be considered part of the application. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1991 MAR p. 2606, Eff. 12/27/91.)

Rule 16.8.1106 reserved

16.8.1107 PUBLIC REVIEW OF PERMIT APPLICATIONS

(1) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the procedures for public review shall be those required by the Montana Environmental Policy Act and the rules adopted by the board and department to implement the act, ARM 16.2.601, 16.2.624 through 16.2.646 and 16.2.760 through 16.2.762.

(2) With the exception of those permit applications subject to (3) below, when the application for a permit does not require the compilation of an environmental impact statement, an application will be deemed to be complete and filed on the date the department received it, unless the department notifies the applicant in writing within 30 days thereafter that it is incomplete. The notice shall list the reasons why the application is considered incomplete and shall specify the date by which any additional information requested must be submitted. If the information is not submitted as required, the application will be considered withdrawn unless the applicant requests in writing an extension of time for submission of the additional information. The application is complete and filed on the date the required additional information is received.

(a) The applicant shall notify the public, by means of legal publication in a newspaper of general circulation in the area affected by the application of its application for permit. The notice shall be made not sooner than 10 days prior to submittal of an application nor later than 10 days after submittal of an application. Form of the notice shall be provided by the department.

(b) Within 40 days after receiving a complete and filed application for a permit, the department shall make a preliminary determination whether the permit should be issued, issued with conditions or denied; and

(c) After making a preliminary determination, the department shall notify those members of the public who requested such notification subsequent to the notice required by (2)(a) of this rule and the applicant of the department's preliminary determination. The notice shall specify that comments may be submitted on the information submitted by the applicant and the department's preliminary determination to issue, issue with conditions or deny the permit. The notice shall also specify the following:

(i) Where a complete copy of the application and the department's analysis of the applicant can be reviewed. One copy of this material shall be made available for inspection by the public in the air quality control region where the source or stack is located.

(ii) A date by which all comments on the department's preliminary determination must be submitted in writing within 15 days after notice is mailed.

(iii) Notwithstanding the opportunity for public comment, a final decision must be made within 60 days after a completed and filed application is submitted to the department as required by 75-2-211, MCA. The notice shall specify the date upon which the 60-day period expires, the person from whom a copy of the final decision may be obtained, and the procedure for requesting a hearing before the board concerning the department's decision.

(3) If an application for an air quality permit is also an application for certification under the terms of the Major Facility Siting Act, public review is governed by the terms of ARM 16.2.501, 502, and 503. (History: Sec. 75-2-111, 75-2-204, 75-20-216(3), MCA; IMP, Sec. 75-2-204, 75-2-211, 75-20-216(3), MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1980 MAR p. 3119, Eff. 12/27/80; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1993 MAR p. 2930, Eff. 12/10/93.) AMD, 1995 MAR p. 535, Eff. 4/14/95.

Rule 16.8.1108 reserved

16.8.1109 CONDITIONS FOR ISSUANCE OF PERMIT (1) Any permit issued under the provisions of this subchapter may be issued with such conditions as are necessary to assure compliance with all applicable rules and standards.

(2) An air quality permit to construct may not be issued to a new or altered source unless the applicant demonstrates that the source or stack can be expected to operate in compliance with the standards and rules adopted under the Montana Clean Air Act, the applicable regulations and requirements of the Federal Clean Air Act (as incorporated by reference in ARM 16.8.1120), and any applicable control strategies contained in the Montana state implementation plan (as incorporated by reference in ARM 16.8.1120), and that it will not cause or contribute to a violation of any Montana or national ambient air quality standard.

(3) A new or altered source shall not commence operation unless the information submitted by the applicant demonstrates that construction has occurred in compliance with the permit and that the source can operate in compliance with applicable rules and standards of the permit.

(4) An air quality permit shall be issued to an existing source unless the department demonstrates that the source does

not operate in compliance with applicable rules or standards or an existing permit granted by the board or department.

(5) Commencement of construction or operation under any permit containing conditions shall be deemed acceptance of all conditions so specified, provided that nothing contained herein shall affect the right of the permittee to appeal the imposition of conditions to the board as provided in 75-2-211, MCA.

(6) Issuance of an air quality preconstruction permit does not affect the responsibility of a source to comply with the applicable requirements of any control strategy contained in the Montana state implementation plan. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1982 MAR p. 1201, Eff. 6/18/82; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1989 MAR p. 756, Eff. 6/16/89; AMD, 1993 MAR p. 2930, Eff. 12/10/93.)

16.8.1110 DENIAL OF PERMIT (1) If the department denies the issuance of an air quality permit it shall:

(a) Notify the applicant in writing of the reasons why the permit is being denied and advise the applicant of his right to appeal the department's decision to the board as provided in 75-2-211, MCA. Service of the department's decision to deny the permit shall be made as provided in the Montana Rules of Civil Procedure except that the applicant may agree by written acknowledgement to service by mail; and

(b) Refuse to accept any further application from the applicant for that particular project until:

(i) The period for appeal to the board has expired;

(ii) The board has rendered a final decision in the matter if an appeal is undertaken; or

(iii) The applicant has agreed to adequately address the reasons for denial. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1111 DURATION OF PERMIT (1) An air quality permit shall be valid until revoked or modified as provided in this subchapter, except that a permit issued prior to construction of a new or altered source may contain a condition providing that the permit will expire unless construction is commenced within the time specified in the permit, which in no event may be less than one year after the permit is issued. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1112 REVOCATION OF PERMIT (1) An air quality permit may be revoked for violations of any condition of a permit, rule, or standard adopted pursuant to the Clean Air Act of

Montana, applicable Federal Clean Air Act regulation, or any provisions of the Montana Clean Air Act or applicable provisions of the federal Clean Air Act. The department shall notify the permittee of its intent to revoke the permit in writing. Service of the department's intention to revoke shall be made as provided in ARM 16.8.1110. The department's decision to revoke a permit shall become final within 15 days after service of the notice unless the permittee requests a hearing before the board. The hearing and judicial review of the board's decision shall be governed by the Montana Administrative Procedure Act. The filing of a request for a hearing postpones the effective date of the department's decision to revoke the permit until the conclusion of the hearing and issuance of a final decision by the board. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1113 MODIFICATION OF PERMIT (1) An air quality permit may be modified for the following reasons:

(a) changes in any applicable rules and standards adopted by the board; or

(b) changed conditions of operation at a source or stack which do not result in an increase in emissions because of the changed conditions of operation. A source may not increase its emissions beyond those found in its permit unless the source applies for and receives another permit in accordance with the procedures found in ARM 16.8.1103 through 16.8.1109 and with all applicable requirements in Title 16, chapter 8, subchapter 9.

(2) The department shall notify the permittee in writing of any proposed modifications of the permit. Service of the department's intention to modify shall be made as provided in ARM 16.8.1110. The permit shall be deemed modified in accordance with the notice within 15 days after service of the notice unless the permittee requests a hearing before the board. The hearing and judicial review of the board's decision shall be governed by the Montana Administrative Procedure Act. The filing of a request for a hearing postpones the effective date of the modifications to the permit until the decision of the board becomes final or judicial review has been concluded. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1987 MAR p. 159, Eff. 2/14/87.)

16.8.1114 TRANSFER OF PERMIT (1) An air quality permit may be transferred from one location to another if:

(a) written notice of intent to transfer location is sent to the department, along with documentation that the permittee has published notice of the intended transfer by means of a

legal publication in a newspaper of general circulation in the area to which the transfer is to be made, such notice including the statement that public comment will be accepted for 15 days after the date of publication by the Department of Environmental Quality, Air Quality Division, PO Box 200901, Helena, MT 59620-0901;

(b) the source will operate in the new location for a period less than 1 year; and

(c) the source can be expected to operate in compliance with:

(i) the standards and rules adopted pursuant to the Montana Clean Air Act, including the Montana ambient air quality standards;

(ii) applicable regulations and standards promulgated pursuant to the Federal Clean Air Act, including the national ambient air quality standards; and

(iii) any control strategies contained in the Montana state implementation plan.

(d) the source is a major modification or major stationary source as defined in ARM 16.8.1701(9) or (10) which would relocate into an area designated nonattainment or into an area where it would cause or contribute to a violation of a national ambient air quality standard, and the source meets all the requirements of ARM 16.8.1701 through 16.8.1705 and ARM 16.8.1801 through 16.8.1806.

(2) An air quality permit may be transferred from one person to another if written notice of intent to transfer, including the names of the transferor and the transferee, is sent to the department.

(3) The department will approve or disapprove a permit transfer within 30 days after receipt of a complete notice of intent as described in (1)(a) or (2) above. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79; AMD, 1982 MAR p. 1482, Eff. 7/30/82; AMD, 1987 MAR p. 159, Eff. 2/14/87; AMD, 1993 MAR p. 2930, Eff. 12/10/93.)

16.8.1115 INSPECTION OF PERMIT (1) Air quality permits shall be made available for inspection by the department at the location of the source or stack for which the permit has been issued. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

Rule 16.8.1116 reserved

16.8.1117 COMPLIANCE WITH OTHER STATUTES AND RULES (1) Nothing in this subchapter shall be construed as relieving any permittee of the responsibility for complying with any applicable federal or Montana statute, rule or standard except as specifically provided in this subchapter.

(History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1118 WAIVERS (1) The department may, as specified in 75-2-211, MCA:

(a) waive the requirements for submittal of information required in an application; and

(b) waive or shorten the time required for the submission of an application. (History: (Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1979 MAR p. 224, Eff. 3/16/79.)

16.8.1119 GENERAL PROCEDURES FOR AIR QUALITY PRECONSTRUCTION PERMITTING (1) It is the intent of this chapter to require the department, whenever possible, to issue a single air quality preconstruction permit which contains a comprehensive listing of all conditions applicable to the specific source, including but not limited to those required by subchapter 9 (Prevention of Significant Deterioration of Air Quality), subchapter 11 (Air Quality Preconstruction Permits for Construction and Operation of Air Contaminant Sources), subchapter 17 (Air Quality Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating Within Nonattainment Areas), subchapter 18 (Air Quality Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating within Attainment or Unclassified Areas Which Would Cause or Contribute to a Violation of a National Ambient Air Quality Standard), and subchapter 19 (Air Quality Permit Applications, Operation and Open Burning Fees), except that the department may conduct general air quality preconstruction permit analyses and issue general air quality preconstruction permits for multiple sources in specific source type and/or size categories.

(2) An air quality preconstruction permit issued or modified under this chapter is valid for the life of the air contaminant source or stack associated with the source, unless:

(a) additional construction, not covered by an existing air quality preconstruction permit, begins on an air contaminant source or stack associated with the source, which would require an air quality preconstruction permit under this chapter; or

(b) the air quality preconstruction permit is revoked or modified as provided for in ARM 16.8.1112 and 16.8.1113; or

(c) the air quality preconstruction permit clearly provides otherwise.

(3) An air quality preconstruction permit shall contain requirements and conditions applicable to both construction and subsequent use.

(4) In no case shall an air quality preconstruction per-

mit be required for the operation or use of an air contaminant source or stack associated with a source unless:

(a) an air quality preconstruction permit has already been obtained to construct, install, or alter an air contaminant source or stack associated with a source; or

(b) an air quality preconstruction permit is required under this chapter to construct, install, or alter an air contaminant source or stack associated with a source.

(5) In order to assist an applicant in obtaining an air quality preconstruction permit under this chapter, the following guidance is provided but is not intended to supersede or replace any specific requirements of this chapter:

(a) Since subchapter 11 constitutes the basic preconstruction permitting program in Montana and is generally applicable to smaller and a larger number of sources, an applicant should first determine if the source is subject to the air quality preconstruction permitting requirements of subchapter 11. However, some sources exempted from the requirements of subchapter 11 may still be major stationary sources subject to the requirements of subchapters 9, 17, or 18.

(b) In general, all sources subject to subchapters 9, 11, 17, 18, or 20 are also subject to subchapter 19.

(c) Any source which is a major source or major modification as defined in ARM 16.8.944 and is locating in an attainment or unclassified area is subject to the requirements of subchapter 9 and may be subject to the requirements of subchapter 18, regardless of any exemption from the requirements of subchapter 11.

(d) Any source which is a major source or major modification as defined in ARM 16.8.1701 and is locating in a nonattainment area is also subject to the requirements of subchapter 17, regardless of any exemption from the requirements of subchapter 11.

(e) If a source submits an air quality preconstruction permit application which is initially subject to subchapter 18, but later amends its air quality preconstruction permit application to reduce its emissions so that it is no longer subject to subchapter 18, the applicant may still be subject to subchapter 9.

(f) Any source which is:

(i) a major source or major modification as defined in ARM 16.8.944 or 16.8.1701; or

(ii) subject to a standard, limitation or other requirement of section 111 or 112 of the Federal Clean Air Act; or

(iii) an affected facility as defined in subchapter 20 is also subject to the requirements of subchapters 19 and 20. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, Sec. 75-2-204, 75-2-211, MCA; NEW, 1993 MAR p. 2930, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1120 INCORPORATION BY REFERENCE (1) For the purpose of this subchapter, the board hereby adopts and incorporates by reference 40 CFR Part 60, (July 1, 1993 ed.), which sets forth standards of performance for new stationary sources; 40 CFR Part 61, (July 1, 1993 ed.), which sets forth emission standards for hazardous air pollutants; 40 CFR Part 51, subpart I, (July 1, 1993 ed.), which sets forth requirements for state programs for issuing air quality preconstruction permits; 40 CFR 52.21, (July 1, 1993 ed.), which sets forth federal regulations for prevention of significant deterioration of air quality, and 40 CFR Part 52, subpart BB (July 1, 1993 ed.), which sets forth the Montana state implementation plan for the control of air pollution in Montana. Copies of the above regulations and the state implementation plan are available for review and copying at the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. (History: Sec. 75-2-111, 75-2-204, MCA; IMP, 75-2-211, MCA; NEW, 1993 MAR p. 2930, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94.)

Sub-Chapter 12

Stack Heights and Dispersion Techniques

16.8.1201 DEFINITIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1978 MAR p. 1729, Eff. 12/29/78; AMD, 1983 MAR p. 277, Eff. 4/1/83; REP, 1986 MAR p. 1021, Eff. 6/13/86.)

16.8.1202 REQUIREMENTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1978 MAR p. 1729, Eff. 12/29/78; AMD, 1983 MAR p. 277, Eff. 4/1/83; REP, 1986 MAR p. 1021, Eff. 6/13/86.)

16.8.1203 EXCEPTIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1978 MAR p. 1729, Eff. 12/29/78; AMD, 1983 MAR p. 277, Eff. 4/1/83; REP, 1986 MAR p. 1021, Eff. 6/13/86.)

16.8.1204 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1)(a) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack which exceeds good engineering practice stack height;

(ii) varying the emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or

(iii) increasing final exhaust gas plume rise by manipulating source process parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(b) The term "dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the merging of gas streams when:

(A) the source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;

(B) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant (this exclusion from the definition of "dispersion technique" applies only to the emission limitation for the pollutant affected by such change in

operation); or

(C) before July 8, 1985, such merging is part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. If there was an increase in the emission limitation or, if no emission limitation was in existence prior to the merging, an increase in the quantity of pollutant actually emitted prior to the merging, the department shall presume that merging was significantly motivated by the intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the department shall deny credit for the effects of such merging in calculating the allowable emissions for the source.

(iii) smoke management in agricultural or silvicultural prescribed burning programs;

(iv) episodic restrictions on residential solid-fuel burning and open burning; or

(v) techniques under (1)(a)(iii) of this rule that increase final exhaust gas plume rise when the resulting allowable emissions for sulfur dioxide from the facility do not exceed 5,000 tons per year.

(2) "Good engineering practice" (GEP) stack height means the greater of:

(a) sixty-five meters, measured from the ground-level elevation at the base of the stack;

(b)(i) for stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable permits or approvals required by this chapter,

$$GEP = 2.5H$$

if the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(ii) for all other stacks,

$$GEP = H + 1.5L$$

where:

GEP	=	good engineering practice stack height, measured from the ground-level elevation at the base of the stack,
H	=	height of nearby structure(s) measured from the ground-level elevation at the base of the stack, and
L	=	lesser dimension, height or projected width, of nearby structure(s);

however, the department may require the use of a field study or fluid model to verify GEP stack height for the source; or

(c) the height demonstrated by a fluid model or a field study approved by the department that ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes,

or eddy effects created by the source itself, or nearby structures or nearby terrain features.

(3) "Nearby" as used in this subchapter for a specific structure or terrain feature means:

(a) for purposes of applying the formula provided in (2)(b) of this rule, that distance up to five times the lesser of the height or the width dimension of a structure, but not greater than 0.8 kilometers (½ mile); and

(b) for purposes of conducting demonstrations under (2)(c) of this rule, not greater than 0.8 kilometers, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if the feature achieves a height 0.8 kilometers from the stack that is at least 40% of the GEP stack height determined by the formula provided in (2)(b)(ii) of this rule or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack.

(4) "Excessive concentration" as used in (2)(c) of this rule means:

(a) For sources seeking credit for stack height exceeding that established under (2)(b) of this rule, a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes and eddy effects produced by nearby structures or nearby terrain features that individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and that contributes to a total concentration due to emissions from all sources greater than an ambient air quality standard as provided in subchapter 8. For sources subject to the prevention of significant deterioration program (subchapter 9), an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features that individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this part is prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates to the satisfaction of the department that this emission rate is infeasible. Where such a demonstration has been made, the department shall establish an alternative emission rate after consultation with the source owner or operator.

(b) For sources seeking credit after October 1, 1983,

for increases in existing stack heights up to the heights established under (2)(b) of this rule, either:

(i) a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects as provided in (4)(a) of this rule, except that the emission rate specified by any applicable state implementation plan (or, in the absence of such a limit, the actual emission rate as defined in ARM 16.8.945(1)(b)) will be used, or

(ii) the actual presence of a public nuisance caused by the existing stack, as determined by the department.

(c) For sources seeking credit after January 12, 1979, for a stack height determined under (2)(b) of this rule if the department requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in (2)(b) of this rule, a maximum ground-level concentration due in whole or in part to downwash, wakes or eddy effects that is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1205 REQUIREMENTS (1) The degree of emission limitation required of any source or stack for control of any air pollutant regulated under the Montana Clean Air Act must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in ARM 16.8.1206.

(2) Before a new or revised state implementation plan emission limitation that is based on good engineering practice stack height that exceeds the height allowed by ARM 16.8.1204 (2)(b)(i) or (ii) is submitted to the environmental protection agency, the department must provide notice and opportunity for public hearing of the availability of any demonstration study as provided by ARM 16.8.1204(2)(c). Such notice and public hearing will be conducted in accordance with the Montana Administrative Procedure Act.

(3) This rule does not require a source owner or operator to restrict, in any manner, the actual stack height of any source. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86.)

16.8.1206 EXEMPTIONS (1) The requirements of ARM 16.8.1205 do not apply to stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except when pollutants are being emitted from such stacks or using such dispersion techniques by stationary sources (as defined by ARM 16.8.945(28)) that were constructed or reconstructed or for which major modifications (as defined in ARM 16.8.945(20)) were carried out after December 31, 1970. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

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Sub-Chapter 13

Open Burning

16.8.1301 DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source. Such techniques and methods may include the following: scheduling of burning during periods and seasons of good ventilation, applying dispersion forecasts, utilizing predictive modeling results performed by and available from the department to minimize smoke impacts, limiting the amount of burning to be performed during any one time, using ignition and burning techniques which minimize smoke production, selecting fuel preparation methods that will minimize dirt and moisture content, promoting fuel configurations which create an adequate air to fuel ratio, prioritizing burns as to air quality impact and assigning control techniques accordingly, and promoting alternative treatments and uses of materials to be burned. For essential agricultural open burning or prescribed wildland open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling (406)444-3454 or (800)225-6779. For prescribed wildland open burning during December, January or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling (406)444-3454.

(2) "Christmas tree waste" means wood waste from commercially grown Christmas trees left in the field where the trees were grown, after harvesting and on-site processing.

(3) "Essential agricultural open burning" means any open burning conducted on a farm or ranch to:

(a) eliminate excess vegetative matter from an irrigation ditch when no reasonable alternative method of disposal is available;

(b) eliminate excess vegetative matter from cultivated fields after harvest has been completed when no reasonable alternative method of disposal is available;

(c) improve range conditions when no reasonable alternative method is available; or

(d) improve wildlife habitat when no reasonable alternative method is available.

(4) "Major open burning source" means any person, agency, institution, business, or industry conducting any open burning

that, on a statewide basis, will emit more than 500 tons per calendar year of carbon monoxide or 50 tons per calendar year of any other pollutant regulated under this chapter, except hydrocarbons.

(5) "Minor open burning source" means any person, agency, institution, business, or industry conducting any open burning that is not a major open burning source.

(6) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(7) "Prescribed wildland open burning" means any planned open burning, either deliberately or naturally ignited, that is conducted on forest land or relatively undeveloped rangeland to:

(a) improve wildlife habitat;

(b) improve range conditions;

(c) promote forest regeneration;

(d) reduce fire hazards resulting from forestry practices, including reduction of log deck debris when the log deck is close to a timber harvest site;

(e) control forest pests and diseases; or

(f) promote any other accepted silvicultural practices.

(8) "Salvage operation" means any operation conducted in whole or in part to salvage or reclaim any product or material, except the silvicultural practice commonly referred to as a salvage cut.

(9) "Trade wastes" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning and prescribed wildland open burning or Christmas tree waste, as defined in this rule.

(10) "Wood waste burner" means a device commonly called a tepee burner, silo, truncated cone, wigwam burner, or other similar burner commonly used by the wood products industry to dispose of wood. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 688, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1302 PROHIBITED OPEN BURNING--WHEN PERMIT REQUIRED

(1) The board hereby adopts and incorporates by reference 40 Code of Federal Regulations (CFR) Part 261, which identifies and defines hazardous wastes. A copy of 40 CFR Part 261 may be obtained from the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(2) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, including waste moved to a solid waste disposal site, except as provided in ARM 16.8.1307 or 16.8.1308;

(b) food wastes;

(c) styrofoam and other plastics;

(d) wastes generating noxious odors;

(e) wood and wood byproducts other than trade wastes that have been coated, painted, stained, or contaminated by a foreign material, such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or unless open burning is allowed under ARM 16.8.1310;

(f) poultry litter;

(g) animal droppings;

(h) dead animals or dead animal parts;

(i) tires, except as provided in ARM 16.8.1306;

(j) rubber materials;

(k) asphalt shingles, except as provided in ARM 16.8.1306 or 16.8.1310;

(l) tar paper, except as provided in ARM 16.8.1306 or 16.8.1310;

(m) automobile or aircraft bodies and interiors, except as provided in ARM 16.8.1306 or 16.8.1310;

(n) insulated wire, except as provided in ARM 16.8.1306 or 16.8.1310;

(o) oil or petroleum products, except as provided in ARM 16.8.1306 or 16.8.1310;

(p) treated lumber and timbers;

(q) pathogenic wastes;

(r) hazardous wastes, as defined by 40 CFR Part 261;

(s) trade wastes, except as provided in ARM 16.8.1307 or 16.8.1308;

(t) any materials resulting from a salvage operation;

(u) chemicals, except as provided in ARM 16.8.1306 or 16.8.1310;

(v) Christmas tree waste as defined in ARM 16.8.1301, except as provided in ARM 16.8.1309;

(w) asbestos or asbestos-containing materials; and

(x) standing or demolished structures except as provided in ARM 16.8.1306, 16.8.1307, or 16.8.1310;

(3) Except as provided in ARM 16.8.1303, no person may

open burn any non-prohibited material without first obtaining an air quality open burning permit from the department. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 689, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1303 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) Unless required to obtain an open burning permit under another provision of this subchapter, a minor open burning source need not obtain an air quality open burning permit, but must:

(a) conform with BACT;

(b) comply with all rules in this subchapter, except ARM 16.8.1304;

(c) comply with any requirements or regulations relating to open burning established by any agency of local government, including local air pollution agencies established under 75-2-301, MCA, of the Montana Clean Air Act, or any other municipal or county agency responsible for protecting public health and welfare;

(d) if it desires to conduct essential agricultural open burning or prescribed wildland open burning during September, October or November, adhere to the time periods set for burning by the department and available by calling (406)444-3454 or (800)225-6779; and

(e) if it desires to conduct essential agricultural open burning or prescribed wildland open burning during December, January, or February,

(i) submit a written request to the department, demonstrating that the essential agricultural open burning or prescribed wildland open burning must be conducted prior to reopening of open burning in March;

(ii) receive specific permission for the burning from the department; and

(iii) adhere to the time periods set for burning by the department and available by calling (406)444-3454. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 690, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1304 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) Prior to open burning, a major open burning source must submit an application to the department for an air quality major open burning permit. The application must be accompanied by the appropriate air quality permit application fee required under ARM 16.8.1907 and must contain the following information:

(a) a legal description of each planned site of open burning or a detailed map showing the location of each planned

site of open burning;

(b) the elevation of each planned site of open burning;

(c) the method of burning to be used at each planned site of open burning; and

(d) the average fuel loading or total fuel loading at each site to be burned.

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(4) A major open burning source must:

(a) conform with BACT; and

(b) receive and adhere to the conditions in any air quality open burning permit issued to it by the department, which will be in effect for one year from its date of issuance; and

(5) To open burn in a manner other than that described in the application for an air quality open burning permit, the source must submit to the department, in writing or by telephone, a request for a change in the permit, including the information required by (1) above, and must receive approval from the department. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 690, Eff.

4/16/82; AMD, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1305 SPECIAL BURNING PERIODS (1) The following categories of open burning may be conducted during the entire year:

(a) prescribed wildland open burning;

(b) open burning to train firefighters under ARM 16.8.1306;

(c) open burning authorized under the emergency open burning permit provisions in ARM 16.8.1308; and

(d) essential agricultural open burning.

(2) Open burning other than those categories listed in (1) above may be conducted only during the months of March through November. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1306 FIREFIGHTER TRAINING (1) The department may issue an air quality open burning permit for open burning of asphalt shingles, tar paper, or insulated wire which is part of a building or standing structure, oil or petroleum products, and automobile or aircraft bodies and interiors, for training firefighters, if:

(a) the fire will be restricted to a building or structure, a permanent training facility, or other appropriate training site, in a site other than a solid waste disposal site;

(b) the material to be burned will not be allowed to smolder after the training session has terminated, and no public nuisance will be created;

(c) all asbestos-containing material has been removed;

(d) asphalt shingles, flooring material, siding, and insulation which might contain asbestos have been removed, unless samples have been analyzed by a certified laboratory and shown to be asbestos-free;

(e) all prohibited material that can be removed safely and reasonably has been removed;

(f) the open burning accomplishes a legitimate training need;

(g) clear educational objectives have been identified for the training;

(h) burning is limited to that necessary to accomplish the educational objectives;

(i) the training operations and procedures are consistent with nationally accepted standards of good practice; and

(j) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department may place any reasonable requirements in an air quality firefighter training open burning permit that the department determines will reduce emissions of air pollut-

ants or will minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(3) The applicant may be required, prior to each burn, to notify the department of the anticipated date and location of the proposed training exercise and the type and amount of material to be burned. The department may be notified by phone, fax or in writing.

(4) An application for an air quality firefighter training open burning permit must be made on a form provided by the department. The applicant must provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(5) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality firefighter training open burning permit shall notify the public of the application for a permit by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/1/82; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1307 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit if the department determines that:

(a) alternative methods of disposal would result in extreme economic hardship to the applicant; and

(b) emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(2) The department must be reasonable when determining whether alternative methods of disposal would result in extreme economic hardship to the applicant.

(3) Conditional open burning must conform with BACT.

(4) The department may issue a conditional air quality open burning permit to dispose of:

(a) wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by the department pursuant to ARM Title 16, chapter 14, subchapter 5; and

(ii) prior to issuance of the air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in ARM 16.8.1302, other than wood waste, are present.

(5) A permit issued under this rule is valid for the following periods:

(a) wood and wood byproduct trade waste--1 year; applicants may reapply for a permit annually; and

(b) untreated wood waste at licensed landfill sites--single burn. A new permit must be obtained for each burn.

(6) The department may place any reasonable requirements in a conditional air quality open burning permit that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. For a permit granted under (4)(a) above, BACT for the year covered by the permit will be specified in the permit; however, the source may be required, prior to each burn, to receive approval from the department of the date of the proposed burn to ensure that good ventilation exists and to assign burn priorities if other sources in the area request permission to burn on the same day. Approval may be requested by calling the air quality division at (406)444-3454.

(7) An application for a conditional air quality open burning permit must be made on a form provided by the department, and must be accompanied by the appropriate air quality permit application fee required under ARM 16.8.1908. The

applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in (8) of this rule, must be submitted to the department before an application will be considered complete.

(8) An applicant for a conditional air quality open burning permit shall notify the public of the application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of an application and no later than 10 days after submittal of an application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(9) A conditional air quality open burning permit granted under (4)(a) above is a temporary measure to allow time for the entity generating the trade wastes to develop alternative means of disposal.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 691, Eff. 4/16/82; AMD, 1991 MAR p. 126, Eff. 2/1/91; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1308 EMERGENCY OPEN BURNING PERMITS (1) The department may issue an emergency air quality open burning permit to allow burning of a substance not otherwise approved for burning under this subchapter if the applicant demonstrates that the substance to be burned poses an immediate threat to public health and safety, or plant or animal life, and that no alternative method of disposal is reasonably available.

(2) Oral authorization to conduct emergency open burning may be requested from the department by telephone (406)444-3454, upon providing the following information:

(a) facts establishing that alternative methods of disposing of the substance are not reasonably available;

(b) facts establishing that the substance to be burned poses an immediate threat to human health and safety or plant or animal life;

(c) the legal description or address of the site where the burn will occur;

(d) the amount of material to be burned;

(e) the date and time of the proposed burn; and

(f) a commitment to pay the appropriate air quality permit application fee required under ARM 16.8.1908 within 10 working days of permit issuance.

(3) Within 10 days of receiving oral authorization to conduct emergency open burning under (2) above, the applicant must submit to the department a written application for an emergency open burning permit containing the information required above under (2)(a) through (f). The applicant shall also submit the appropriate air quality permit application fee required under ARM 16.8.1908. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1982 MAR p. 692, Eff. 4/16/82; AMD, 1992 MAR p. 2285, Eff. 10/16/92; AMD, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1309 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) The department may issue an air quality open burning permit for disposal of Christmas tree waste, as defined in ARM 16.8.1301(2).

(2) The department may issue an air quality Christmas tree waste open burning permit if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) Christmas tree waste open burning must conform with BACT.

(4) A permit issued under this rule is valid for one year, and applicants may reapply for a permit annually.

(5) The department may place any reasonable requirements in an air quality Christmas tree waste open burning permit that the department determines will reduce emissions of air pollut-

ants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions. The following conditions, at a minimum, must be included in any air quality Christmas tree waste open burning permit:

(a) BACT for the year covered by the permit; and

(b) a provision that the source may be required, prior to each burn, to receive approval from the department of the date and time of the proposed burn to ensure that good ventilation exists and to assign burn priorities, if necessary. Approval may be requested by calling the air quality bureau at (406)444-3454.

(6) An application for an air quality Christmas tree waste open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit.

(7) An applicant for an air quality Christmas tree waste open burning permit shall notify the public of its application either by publishing a notice in a newspaper of general circulation or by posting at least 2 public notices, one on the property as described in (a)(i) below, and one in a conspicuous location at the county courthouse as described in (a)(ii) below.

(a) Posted public notices must comply with the following conditions:

(i) At least 1 public notice must be posted on the property where the open burning is to occur, near the closest public right-of-way to the property, in a location clearly visible from the right-of-way;

(ii) At least 1 public notice must be posted in a conspicuous location at the county courthouse in the county where the burning is to take place;

(iii) The 2 public notices must be posted no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application and must remain posted in a visible condition for a minimum of 15 days; and

(iv) The 2 public notices must state the information in the application, the procedure for providing public comment to the department on the application, the date by which public comments must be submitted to the department, and the procedure for requesting a copy of the department's decision.

(b) Publication of public notices in a newspaper must:

(i) be by legal publication, at least once, in a newspaper of general circulation in the area affected by the application;

(ii) be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application; and

(iii) follow a form provided by the department, including

a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94.)

16.8.1310 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) The department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial or educational film or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

(2) The department may issue an air quality commercial film production open burning permit under this rule if the department determines that emissions from open burning will not endanger public health or welfare or cause or contribute to a violation of any Montana or federal ambient air quality standard.

(3) A permit issued under this rule is valid for a single production.

(4) Open burning under this rule must conform with BACT.

(5) The department may place any reasonable requirements in an air quality commercial film production open burning permit issued under this rule that the department determines will reduce emissions of air pollutants or minimize the impact of emissions, and the recipient of a permit must adhere to those conditions.

(6) An application for an air quality commercial film production open burning permit must be made on a form provided by the department. The applicant shall provide adequate information to enable the department to determine whether the application satisfies the requirements of this rule for a permit. Proof of publication of public notice, as required by (7) of this rule, must be submitted to the department before an application will be considered complete.

(7) An applicant for an air quality commercial film production open burning permit shall notify the public of its application by legal publication, at least once, in a newspaper of general circulation in the area affected by the application. The notice must be published no sooner than 10 days prior to submittal of the application and no later than 10 days after submittal of the application. Form of the notice must be provided by the department and must include a statement that public comments may be submitted to the department concerning the application within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, 75-2-211, MCA; NEW, 1994 MAR p. 2528, Eff. 9/9/94.)

Sub-Chapter 14

Emission Standards

16.8.1401 PARTICULATE MATTER, AIRBORNE (1) No person shall cause or authorize the production, handling, transportation, or storage of any material unless reasonable precautions to control emissions of airborne particulate matter are taken. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20% or greater averaged over six consecutive minutes, except for emission of airborne particulate matter originating from any transfer ladle or operation engaged in the transfer of molten metal which was installed or operating prior to November 23, 1968.

(2) No person shall cause or authorize the use of any street, road, or parking lot without taking reasonable precautions to control emissions of airborne particulate matter.

(3) No person shall operate a construction site or demolition project unless reasonable precautions are taken to control emissions of airborne particulate matter. Such emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20% or greater averaged over six consecutive minutes.

(4) Within any area designated non-attainment in 40 CFR 81.327 for the national ambient air quality standards for PM-10, any person who owns or operates:

(a) any existing source of airborne particulate matter shall apply reasonably available control technology (RACT);

(b) any new source of airborne particulate matter that has a potential to emit less than 100 tons per year of particulates shall apply best available control technology (BACT);

(c) any new source of airborne particulate matter that has a potential to emit more than 100 tons per year of particulates shall apply lowest achievable emission rate (LAER).

(5) The provisions of this rule shall not apply to emissions of airborne particulate matter originating from any activity or equipment associated with the use of agricultural land or the planting, production, harvesting, or storage of agricultural crops (this exemption does not apply to the processing of agricultural products by a commercial business). (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA, Eff. 12/31/72; AMD, 1979 MAR p. 145, Eff. 2/16/79; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1402 PARTICULATE MATTER, FUEL BURNING EQUIPMENT

(1) No person shall cause, suffer, allow or permit particulate matter caused by the combustion of fuel to be discharged from any stack or chimney into the atmosphere in excess of the hourly rate set forth in the following table:

	Maximum Allowable Emissions of Particulate Matter in lbs. per million British Thermal Units	
Heat Input in Million British Thermal Units per hour	Existing Fuel Burning Equipment	New Fuel Burning Equipment
Up to and including 10	0.60	0.60
100	0.40	0.35
1,000	0.28	0.20
10,000 and above	0.19	0.12

(2) For a heat input between any two consecutive heat inputs stated in the preceding table, maximum allowable emissions of particulate matter are shown for existing fuel burning equipment on Figure 1 and for new fuel burning equipment on Figure 2 (pages 16-220.1 and 16-220.2). For the purposes hereof, heat input shall be calculated as the aggregate heat content of all fuels (using the upper limit of their range of heating value) whose products of combustion pass through the stack or chimney.

(3) When two or more fuel burning units are connected to a single stack, the combined heat input of all units connected to the stack shall not exceed that allowable for the same unit connected to a single stack.

(4) This rule does not apply to emissions from residential solid fuel combustion devices such as fireplaces and wood and coal stoves. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1988 MAR p. 500, Eff. 3/11/88.)

16.8.1403 PARTICULATE MATTER, INDUSTRIAL PROCESSES

(1) No person shall cause, suffer, allow, or permit to be discharged into the outdoor atmosphere from any operation, process or activity, particulate matter in excess of the amount shown in the following table. When the process weight falls between two values in the table, the maximum weight discharged per hour shall be determined by interpolation.

(2) When the process weight exceeds 60,000 pounds per hour, the maximum allowable weight discharged per hour will be determined by use of the following equation:

$$E = 55.0\ P^{0.11} - 40$$

Where E = maximum rate of emission in pounds per hour, P= process weight rate in tons per hour.

Process Weight Rate		Rate of Emission
lb/hr	Tons/hr	lb/hr
100	0.05	0.551
200	0.10	0.877
400	0.20	1.40
600	0.30	1.83
800	0.40	2.22
1,000	0.50	2.58
1,500	0.75	3.38
2,000	1.00	4.10
2,500	1.25	4.76
3,000	1.50	5.38
3,500	1.75	5.96
4,000	2.00	6.52
5,000	2.50	7.58
6,000	3.00	8.56

Process Weight Rate		Rate of Emission
lb/hr	Tons/hr	lb/hr
7,000	3.50	9.49
8,000	4.00	10.4
9,000	4.50	11.2
10,000	5.00	12.00
12,000	6.00	13.6
16,000	8.00	16.5
18,000	9.00	17.9
20,000	10.00	19.2
30,000	15.00	25.2
40,000	20.00	30.5
50,000	25.00	35.4
60,000	30.00	40.0
70,000	35.00	41.3
80,000	40.00	42.5
90,000	45.00	43.6
100,000	50.00	44.6
120,000	60.00	46.3
140,000	70.00	47.8
160,000	80.00	49.0
200,000	100.00	51.2
1,000,000	500.00	69.0
2,000,000	1,000.00	77.6
6,000,000	3,000.00	92.7

Interpolation of the data in this table for process weight rates up to 60,000 lb/hr shall be accomplished by use of the equation:

$$E = 4.10\ P^{0.67}$$

Interpolation and extrapolation of the data for process weight rates in excess of 60,000 pounds per hour shall be accomplished by use of the equation:

$$E = 55.0\ P^{0.11} - 40$$

Where E = rate of emission in pounds per hour and P = process weight rate in tons per hour.

(3) This rule shall not apply to particulate matter emitted from:

(a) the reduction cells of a primary aluminum reduction plant;

(b) those new stationary sources listed in ARM 16.8.1423 for which a particulate emission standard has been promulgated;

(c) fuel burning equipment;

(d) incinerators. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; AMD, Eff. 9/5/75.)

Figure 1

MAXIMUM EMISSION OF PARTICULATE MATTER FROM EXISTING FUEL BURNING INSTALLATIONS

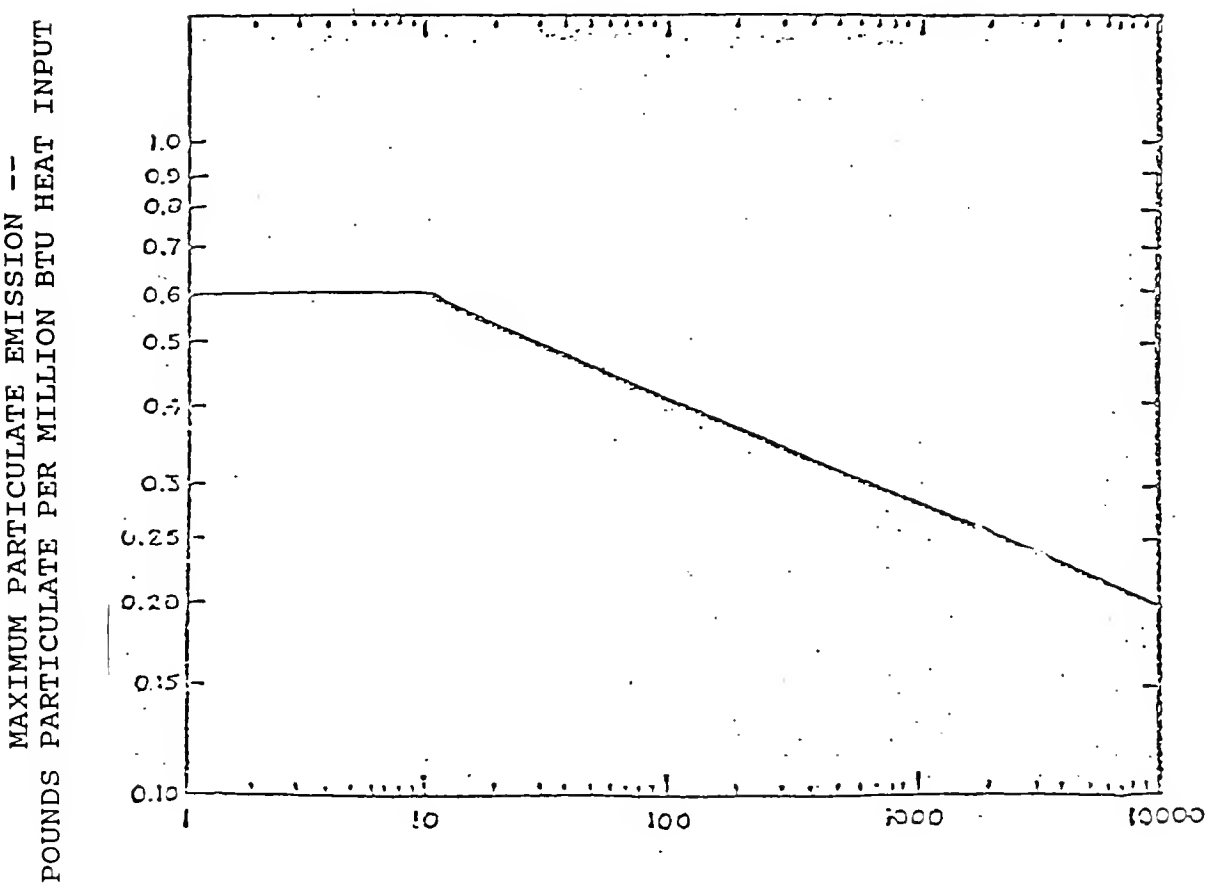
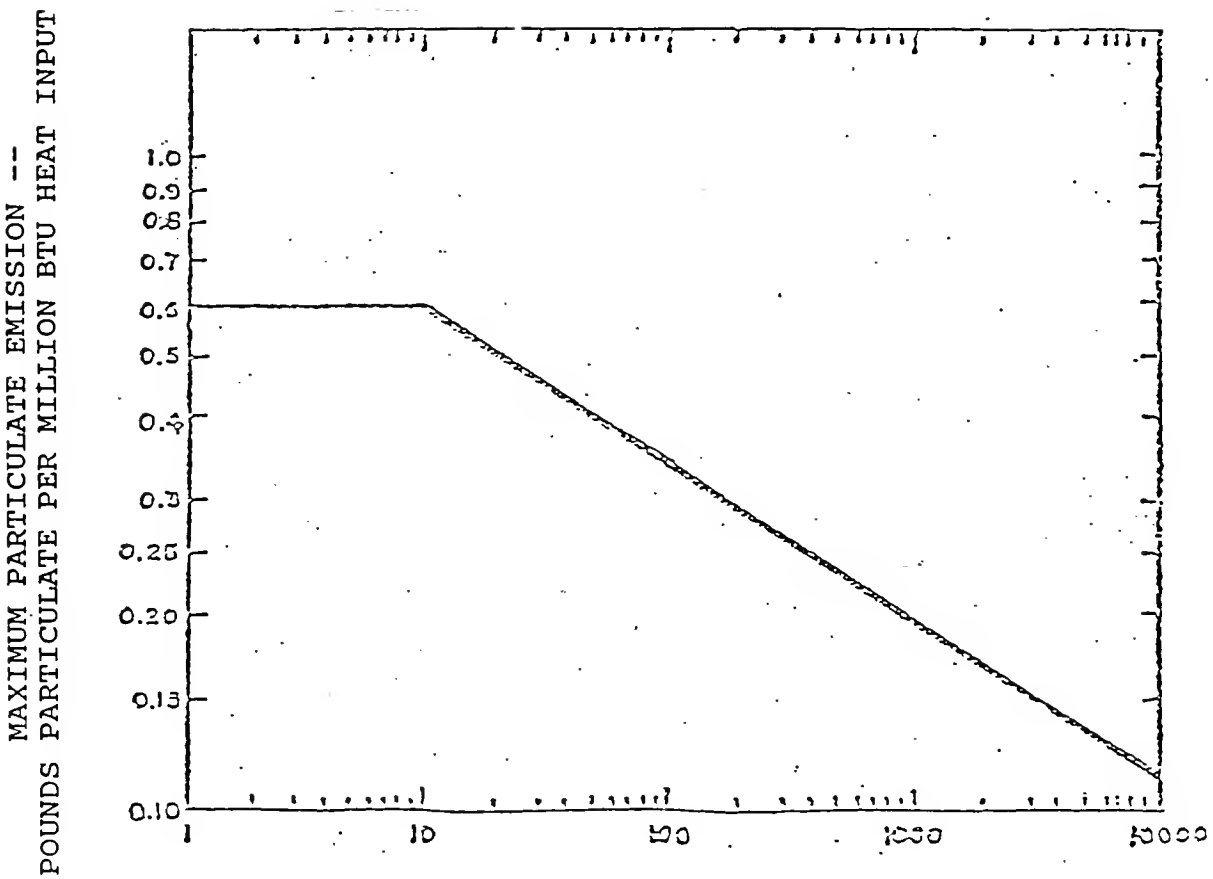


Figure 2

MAXIMUM EMISSION OF PARTICULATE MATTER FROM NEW FUEL BURNING INSTALLATIONS



16.8.1404 VISIBLE AIR CONTAMINANTS (1) No person may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed on or before November 23, 1968, that exhibit an opacity of 40% or greater averaged over 6 consecutive minutes. The provisions of this section do not apply to transfer of molten metals or emissions from transfer ladles.

(2) No person may cause or authorize emissions to be discharged into the outdoor atmosphere from any source installed after November 23, 1968, that exhibit an opacity of 20% or greater averaged over 6 consecutive minutes.

(3) During the building of new fires, cleaning of grates, or soot blowing, the provisions of (1) and (2) shall apply, except that a maximum average opacity of 60% is permissible for not more than 1 4-minute period in any 60 consecutive minutes. Such a 4-minute period means any 4 consecutive minutes.

(4) This rule does not apply to emissions from:

(a) wood-waste burners;

(b) incinerators;

(c) motor vehicles;

(d) those new stationary sources listed in ARM 16.8.1423 for which a visible emission standard has been promulgated;

(e) residential solid-fuel combustion devices such as fireplaces and wood or coal stoves; or

(f) recovery furnaces at kraft pulp mills. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1727, Eff. 12/29/78; AMD, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1995 MAR p. 1572, Eff. 8/11/95.)

16.8.1405 OPEN BURNING RESTRICTIONS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1977 MAR p. 259, Eff. 8/26/77; AMD, 1978 MAR p. 318, Eff. 8/11/78; AMD, 1979 MAR p. 486, Eff. 5/26/79; REP, 1982 MAR p. 688, Eff. 4/16/82.)

16.8.1406 INCINERATORS (1) No incinerator shall be used for the burning of refuse unless such incinerator is a multiple chamber incinerator or one of other design of equal effectiveness approved by the department prior to installation or use.

(2) No person shall cause or authorize to be discharged into the outdoor atmosphere from any incinerator, particulate matter in excess of 0.10 grains per standard cubic foot of dry flue gas, adjusted to 12% carbon dioxide and calculated as if no auxiliary fuel had been used.

(3) No person shall cause or authorize to be discharged into the outdoor atmosphere from any incinerator emissions which exhibit an opacity of 10% or greater averaged over 6 consecutive minutes.

(4) The department may, for purposes of evaluating

compliance with this rule, direct that no person shall operate or cause or authorize the operation of any incinerator at any time other than between the hours of 8:00 a.m. and 5:00 p.m. At those times when the operation of incinerators is prohibited by the department, the owner or operator of the incinerator shall store the refuse in a manner that will not create a fire hazard or arrange for the removal and disposal of the refuse in a manner consistent with ARM Title 16, chapter 14, subchapter 5.

(5) The provisions of this rule are applicable to performance tests for determining emissions of particulate matter from incinerators. All performance tests shall be conducted while the affected facility is operating at or above the maximum refuse charging rate at which such facility will be operated and the refuse burned shall be representative of normal operation and under such other relevant conditions as the department shall specify based on representative performance of the affected facility. Test methods set forth in 40 CFR Part 60, or equivalent methods approved by the department shall be used. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; AMD, 1978 MAR p. 1731, Eff. 12/29/78.)

16.8.1407 WOOD-WASTE BURNERS (1) It is hereby declared to be the policy of the department to encourage the complete utilization of wood-waste residues and to restrict, wherever reasonably practical, the disposal of wood-waste residues by combustion in wood-waste burners. Recent technological and economic developments have enhanced the degree to which wood-waste residues currently being disposed of in wood-waste burners may be utilized or otherwise disposed of in ways not damaging the environment. While recognizing that complete utilization of wood-waste is not presently possible in all instances, this policy applies to the extent practical and consistent with economic and geographical conditions in Montana.

(2) Construction, reconstruction, or substantial alteration of wood-waste burners is prohibited unless the requirements of subchapter 11 of this chapter have been met.

(3) No person shall cause or authorize to be discharged into the outdoor atmosphere from any wood-waste burner any emissions which exhibit an opacity of 20% or greater averaged over 6 consecutive minutes. The provisions of this section may be exceeded for not more than 60 minutes in 8 consecutive hours for building of fires in wood-waste burners.

(4) A thermocouple and a recording pyrometer or other temperature measurement and recording device approved by the department shall be installed and maintained on each wood-waste burner. The thermocouple shall be installed at a location near the center of the opening for the exit gases, or at another

location approved by the department.

(5) Except as provided in (6), a minimum temperature of 700°F shall be maintained during normal operation of all wood-waste burners. A normal start-up period of 1 hour is allowed during which the 700°F minimum temperature does not apply. The burner shall maintain 700°F operating temperature until the fuel feed is stopped for the day.

(6) Wood-waste burners in existence on February 10, 1989, do not have to comply with the requirements of (5) if they are located outside of 10-micron particulate (PM-10) nonattainment areas.

(7) The owner or operator of a wood-waste burner must maintain a daily written log of the wood-waste burner's operation to determine optimum patterns of operations for various fuel and atmospheric conditions. The log shall include, but not be limited to, the time of day, draft settings, exit gas temperature, type of fuel, and atmospheric conditions. The log or a copy of it must be submitted to the department within 10 days after it is requested.

(8) No person shall use a wood-waste burner for the burning of other than production process wood-waste transported to the burner by continuous flow conveying methods.

(9) Rubber products, asphaltic materials, or other prohibited materials specified in ARM 16.8.1302(2)(b)-(d), (f)-(r), (t) and (u), may not be burned or disposed of in wood-waste burners. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1978 MAR p. 1732, Eff. 12/29/79; AMD, 1989 MAR p. 270, Eff. 2/10/89; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

Rules 16.8.1408 through 16.8.1410 reserved

16.8.1411 SULFUR OXIDE EMISSIONS--SULFUR IN FUEL

(1) "Btu" means British thermal unit which is the heat required to raise the temperature of 1 pound of water through 1 Fahrenheit degree.

(2) Commencing July 1, 1970, no person shall burn liquid or solid fuels containing sulfur in excess of 2 pounds of sulfur per million Btu fired.

(3) Commencing July 1, 1971, no person shall burn liquid or solid fuels containing sulfur in excess of 1.5 pounds of sulfur per million Btu fired.

(4) Commencing July 1, 1972, no person shall burn liquid or solid fuels containing sulfur in excess of 1 pound of sulfur per million Btu fired.

(5) Commencing July 1, 1971, no person shall burn any gaseous fuel containing sulfur compounds in excess of 50 grains per 100 cubic feet of gaseous fuel, calculated as hydrogen sulfide at standard conditions. The provisions of (5) shall not apply to:

(a) The burning of sulfur, hydrogen sulfide, acid sludge or other sulfur compounds in the manufacturing of sulfur or sulfur compounds.

(b) The incinerating of waste gases provided that the gross heating value of such gases is less than 300 Btu's per cubic foot at standard conditions and the fuel used to incinerate such waste gases does not contain sulfur or sulfur compounds in excess of the amount specified in this rule.

(c) The use of fuels where the gaseous products of combustion are used as raw materials for other processes.

(d) Small refineries (under 10,000 barrels per day crude oil charge) provided that they meet other provisions of this rule.

(6) The following are exceptions to this rule:

(a) A permit may be granted by the director to burn fuels containing sulfur in excess of the sulfur contents indicated in (2)-(5) provided it can be shown that the facility burning the fuel is fired at a rate of 1 million btu per hour or less.

(b) For purpose of this rule, a higher sulfur-containing fuel may, upon application to the director, be utilized in (2), (3) or (4) if such fuel is mixed with one or more lower sulfur-containing fuels which results in a mixture, the equivalent sulfur content of which is not in excess of the stated values when fired.

(c) The requirements of (2), (3), or (4) shall also be deemed to have been satisfied if, upon application to the director, a sulfur dioxide control process is applied to remove the sulfur dioxide from the gases emitted by burning of fuel of any sulfur content which results in an emission of sulfur in pounds per hour not in excess of the pounds per hour of sulfur that would have been emitted by burning fuel of the sulfur content indicated without such a cleaning device. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72.)

16.8.1412 SULFUR OXIDE EMISSIONS--PRIMARY COPPER SMELTERS

(1) No person may cause an emission of reduced sulfur from any copper smelting operation in excess of the amount shown in the following table:

Total Feed of Sulfur, lb/hr	Allowable Sulfur Emission, lb/hr
1,000	100
5,000	500
10,000	1,000
20,000	2,000
40,000	4,000
60,000	6,000
80,000	8,000
100,000	10,000
Over 100,000	10,000

(2) For a total sulfur feed input between any 2 consecutive total sulfur feed inputs stated in the preceding table, maximum allowable emissions are shown in Figure I which follows this rule and by reference is made a part of this rule. For the purposes of this rule, total sulfur input must be calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products pass through the stack or chimney.

(a) When two or more furnaces, roasters, converters or other similar devices for converting copper ores, concentrates, residues or slag to the metal or the oxide of the metal either wholly or in part are connected to a single stack, the combined sulfur input of all units connected to the stack must be used to determine the allowable emission from the stack.

(b) When a single furnace, roaster, converter or other similar device for converting copper ores, concentrates, residues, or slag to the metal or the oxide of the metal either wholly or in part is connected to two or more stacks, the allowable emission from all the stacks combined must not exceed that allowable from the same unit connected to a single stack.

(3) The effective date of this rule for existing operations is June 30, 1973. For new operations, the effective date is June 30, 1970. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, 1981 MAR p. 203, Eff. 3/13/81.)

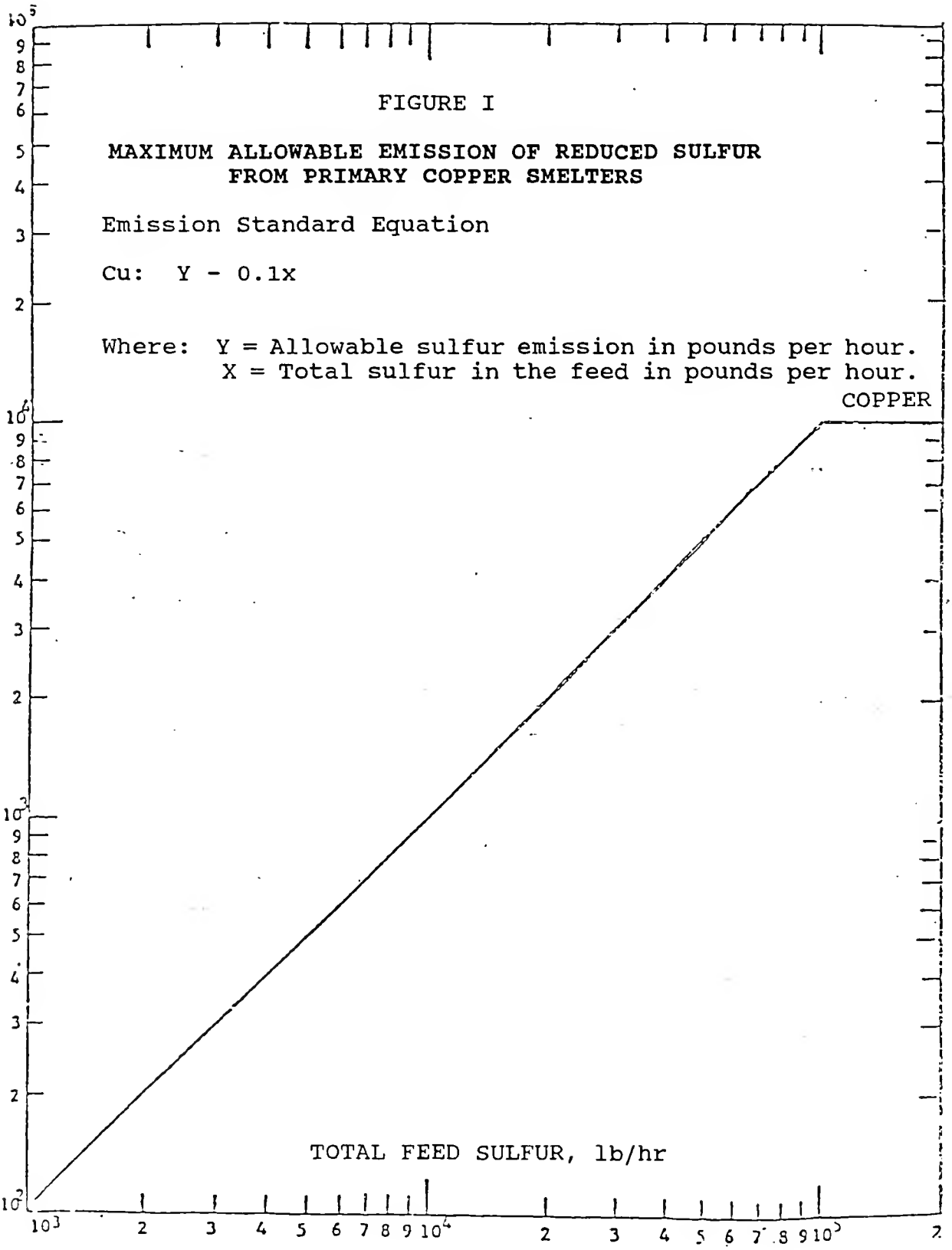
FIGURE I

MAXIMUM ALLOWABLE EMISSION OF REDUCED SULFUR FROM PRIMARY COPPER SMELTERS

Emission Standard Equation

Cu: Y - 0.1x

Where: Y = Allowable sulfur emission in pounds per hour.
X = Total sulfur in the feed in pounds per hour.



16.8.1413 KRAFT PULP MILLS (1) For the purposes of this rule, the following definitions apply:

(a) "Continual monitoring" means sampling and analysis, in a continuous or times sequence, using techniques which will adequately reflect actual emission levels or concentrations on a continuous basis.

(b) "Cross recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor that on a quarterly basis contains more than 7 weight percent of the total pulp solids from the neutral sulfite semichemical process and has a green liquor sulfidity of more than 28%.

(c) "Kraft mill" or "mill" means any pulping process which uses, for cooking liquor, an alkaline sulfate solution containing sodium sulfide.

(d) "Non-condensibles" means gases and vapors from the digestion and evaporation processes of a mill that are not condensed with the equipment used in those processes.

(e) "Parts per million" means parts of a contaminant per million parts of gas by volume.

(f) "Recovery furnace" means either a straight kraft recovery furnace or a cross recovery furnace, and includes the direct-contact evaporator for a direct-contact furnace.

(g) "Recovery furnace stack" means the stack from which the products of combustion from the recovery furnace are emitted to the ambient air.

(h) "Straight kraft recovery furnace" means a furnace used to recover chemicals consisting primarily of sodium and sulfur compounds by burning black liquor that on a quarterly basis contains 7 weight percent or less of the total pulp solids from the neutral sulfite semichemical process or has green liquor sulfidity of 28% or less.

(i) "Total reduced sulfur (TRS)" means hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present.

(2) No person or persons shall cause, suffer, allow or permit to be discharged into the outdoor atmosphere from any kraft pulping mill total reduced sulfur in excess of 0.087 pounds per 1,000 pounds of black liquor from each recovery furnace stack or 17.5 parts per million, expressed as hydrogen sulfide on a dry gas basis, whichever is more restrictive or such other limit of TRS that proves to be reasonably attainable utilizing the latest in design of recovery furnace equipment, controls and procedures but not more than 0.087 pounds of TRS per 1,000 pounds of black liquor.

(3) Non-condensibles from digesters and multiple-effect evaporators shall be treated to reduce the emission of TRS equal to the reduction achieved by thermal oxidation in a lime kiln.

(4) Every kraft mill in the state shall install equipment

for the continual monitoring of TRS.

(a) The monitoring equipment shall be capable of determining compliance with these standards and shall be capable of continual sampling and recording of the concentrations of TRS contaminants during a time interval not greater than 30 minutes.

(b) The sources monitored shall include, but are not limited to, the recovery furnace stacks and the lime kiln stacks.

(c) Each mill shall sample the recovery furnace, lime kiln, and smelt tank for particulate emissions on a regularly scheduled basis in accordance with its approved sampling program.

(d) Equipment shall be ordered within 30 days after a monitoring program has been approved in writing by the director. The equipment shall be placed in effective operation in accordance with the approved program within 60 days after delivery.

(5) Unless otherwise authorized by the director, data shall be reported by each mill at the end of each calendar month as follows:

(a) Daily average emission of TRS gases expressed in pounds of sulfur per 1,000 pounds of black liquor fired for each source included in the approved monitoring program.

(b) The number of hours each day that the emission of TRS gases from each recovery furnace stack exceeds 17.5 parts per million dry and the maximum concentration of TRS measured each day.

(c) Emission of TRS gases in pounds of sulfur per 1,000 pounds of black liquor fired in the kraft recovery furnace on a monthly basis and pounds of sulfur per hour for the other sources included in the approved monitoring program. Emission of particulates in pounds per hour based upon a sampling conducted in accordance with the approved monitoring program.

(d) Average daily kraft pulp production in air-dried tons and average daily black liquor burning rate.

(e) Other emission data as specified in the approved monitoring program.

(6) Each kraft mill shall furnish, upon request of the director, such other pertinent data as may be required to evaluate the mill's emission control program. Each mill shall immediately report abnormal mill operations which result in increased emissions of air contaminants, following procedures set forth in the approved monitoring program.

(7) All TRS emission standards in this rule will be based on average daily emissions. The TRS limitations in this rule will not preclude a requirement to install the highest and best practicable treatment and control available. New mills or mills expanding existing facilities may be required to meet more restrictive TRS emission limits.

(8) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed on or before November 23, 1968, emissions that exhibit 35% opacity or greater averaged over 6 consecutive minutes. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 16.8.1404 and 16.8.1423.

(9) No person may cause or authorize to be discharged into the outdoor atmosphere, from any recovery furnace installed after November 23, 1968, emissions that exhibit 30% opacity or greater averaged over 6 consecutive minutes. For recovery furnaces, this opacity limitation supersedes any other opacity limitation contained in this chapter, including ARM 16.8.1404 and 16.8.1423.

(10) Any person subject to (8) or (9) above shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) to monitor and record the opacity of emissions discharged into the atmosphere from any recovery furnace subject to this rule. This COMS shall comply with the requirements of 40 CFR, Part 60, regarding the installation, calibration, maintenance, and operation of COMS for kraft pulp mill recovery furnaces and any other applicable requirement in this chapter regarding the installation, calibration, maintenance, and operation of COMS.

(11) COMS will be the primary measure of compliance with the opacity limits specified in (8) or (9) above, except that the department may use another appropriate method of determining compliance, as specified in the Montana source test protocol and procedures manual, including the test method contained in 40 CFR, Part 60, appendix A, method 9, when the department has reason to believe that COMS data is not accurate or when COMS data is unavailable.

(12) Any person subject to (10) above shall report every time period of excess opacity from any recovery furnace, as determined by the COMS, and shall report every time period when the COMS was not operational. For the purposes of this report, excess emissions means any 6 minute average opacity of 35% or greater for any recovery furnace installed on or before November 23, 1968, or 30% or greater for any recovery furnace installed after November 23, 1968. These reports must be submitted on forms provided by the department and must be made in compliance with department procedures and applicable requirements for submittal of excess emissions reports. These reports must be submitted to the department quarterly, within 30 days after the end of each calendar quarter. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, 75-2-203, MCA; Eff. 12/31/72; AMD, 1995 MAR p. 1572, Eff. 8/11/95.)

16.8.1414 SULFUR OXIDE EMISSIONS--LEAD OR LEAD-ZINC SMELTING FACILITIES (1) No person may cause an emission of sulfur dioxide from a lead or lead-zinc smelter stack, as described below, existing on January 1, 1980, in excess of the amount set forth below:

Lead or Lead-Zinc Smelter Source	Emission Limitation
Main (Sinter Machine)	80 tons/day
Stack	20 tons/6 hours
Blast Furnace	23 tons/day
Baghouse Stack	5.75 tons/6 hours

(2) Compliance with (1) of this rule shall be determined by source testing as specified by 40 CFR, Part 60, Appendix A--Reference Methods, "Method 6--Determination of Sulfur Dioxide Emissions from Stationary Sources" or "Method 8--Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources," and the source testing shall consist of averaging 3 separate 1-hour tests using the applicable testing methods. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1981 MAR p. 203, Eff. 3/13/81; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

Rules 16.8.1415 through 16.8.1418 reserved

16.8.1419 FLUORIDE EMISSIONS--PHOSPHATE PROCESSING (1) No person shall cause, suffer, allow or permit to be discharged into the outdoor atmosphere from any phosphate rock or phosphorite processing equipment or equipment used in the production of elemental phosphorous, enriched phosphates, phosphoric acid, defluorinated phosphates, phosphate fertilizers or phosphate concentrates or any equipment used in the processing of fluorides enriched wastewater fluorides in a gaseous or particulate form or any combination of gaseous or particulate forms in excess of 0.3 pounds per ton of P_2O_5 (phosphorous pentoxide) introduced into the process of any calcining, nodulizing, defluorinating or acidulating process or any combination of the foregoing, or any other process, except aluminum reduction, capable of causing a release of fluorides in the form or forms indicated in (1).

(2) No person or persons shall cause, suffer, allow or permit to be released into the outdoor atmosphere from any storage pond, settling basin, ditch, liquid holding tank or other liquid holding or conveying device from operations outlined in (1) fluorides in excess of 108 micrograms per square centimeter per 28 days ($\mu g/cm^2$/28 days) using the calcium formate paper method. Papers shall be exposed in a standard Montana Box located not less than 18 inches or more than 48 inches above the level of the liquid in the devices

herein enumerated and not more than 16 inches laterally from the liquid's edge. Other locations may be permitted if approved by the director.

(3) Not less than 4 such sampling stations shall be placed at locations designated by the director. Two or more calcium formate papers, as designated by the director, shall be exposed in the standard Montana Box for a period designated by the director. Regardless of the duration of the sampling period, the values determined shall be corrected to 28 days.

(4) A minimum of 2 calcium formate papers for each sampling period from each sample box shall be provided the director if requested and within 10 days from the date of request.

(5) Calcium formate papers shall be prepared as follows:

(a) Soak Whatman #2, 11 cm. filter papers in a 10% solution of calcium formate for 5 minutes.

(b) Dry in a forced air oven at 80°C. Remove immediately when dryness is reached.

(6) Calcium formate papers shall be exposed as follows:

(a) Two papers, or more, if directed, are suspended in a standard Montana Box on separate hangers at least 2 inches apart.

(b) Exposure shall be for 28 days ±3 days unless otherwise indicated by the director.

(c) Calcium formate papers shall be kept in an airtight container both before and after exposure until the time of analysis.

(7) Analysis of calcium formate papers is adapted from Standard Methods for the Examination of Water and Waste Water; using Willard-Winter perchloric acid distillations and Spadns-Zirconium Lake method for fluoride determination. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72.)

16.8.1420 FLUORIDE AND PARTICULATE EMISSIONS--ALUMINUM PLANTS IS REPEALED (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 7/5/74; REP, 1981 MAR p. 357, Eff. 4/17/81.)

Rules 16.8.1421 and 16.8.1422 reserved

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, means the department, except in the case of those duties which cannot be delegated to the state by the US environmental protection agency, in which case "administrator" means the administrator of the US environmental protection agency.

(b) "Stationary source" means any building, structure,

facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

(2) The terms and associated definitions specified in 40 CFR 60.2, shall apply to this rule, except as specified in (1)(a).

(3) The owner and operator of any stationary source or modification, as defined and applied in 40 CFR Part 60, shall comply with the standards and provisions of 40 CFR Part 60. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, Eff. 9/5/75; AMD, Eff. 9/5/76; AMD, 1978 MAR p. 1621, Eff. 12/15/78; AMD, 1982 MAR p. 1744, Eff. 10/1/82; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1987 MAR p. 744, Eff. 7/20/87; AMD, 1988 MAR p. 500, Eff. 3/11/88; AMD, 1991 MAR p. 1143, Eff. 7/12/91; AMD, 1992 MAR p. 2741, Eff. 12/25/92; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR 61.02, shall apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, means the department, except in the case of those duties which cannot be delegated to the state by the US environmental protection agency, in which case "administrator" means the administrator of the US environmental protection agency.

(2) The owner or operator of any existing or new stationary source, as defined and applied in 40 CFR Part 61, shall comply with the standards and provisions of 40 CFR Part 61. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, Eff. 9/5/76; AMD, 1978 MAR p. 1621, Eff. 12/15/78; AMD, 1982 MAR p. 1744, Eff. 10/1/82; AMD, 1985 MAR p. 1326, Eff. 9/13/85; AMD, 1987 MAR p. 744, Eff. 7/20/87; AMD, 1988 MAR p. 500, Eff. 3/11/88; AMD, 1991 MAR p. 1143, Eff. 7/12/91; AMD, 1992 MAR p. 2741, Eff. 12/25/92; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1425 HYDROCARBON EMISSIONS--PETROLEUM PRODUCTS

(1) No person shall place, store or hold in any stationary tank, reservoir or other container of more than 65,000 gallons capacity any crude oil, gasoline or petroleum distillate having a vapor pressure of 2.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressures sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is designed and equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:

(a) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid

contents and equipped with a closure seal, or seals to close space between the roof edge and tank wall. The control equipment provided for in this paragraph shall not be used if the gasoline or petroleum distillate has a vapor pressure of 13.0 pounds per square inch absolute or greater under actual storage conditions. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(b) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(c) Other equipment of equal efficiency provided such equipment has been approved by the department.

(2) No person shall use any compartment of any single or multiple compartment oil-effluent water separator which compartment receives effluent water containing 200 gallons a day or more of any petroleum product from any equipment processing, refining, treating, storing or handling kerosene or other petroleum product of equal or greater volatility than kerosene, unless such compartment is equipped with one of the following vapor loss control devices, constructed so as to prevent any emission of hydrocarbon vapors to the atmosphere, properly installed, in good working order and in operation.

(a) A solid cover with all openings sealed and totally enclosing the liquid contents. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(b) A floating roof, consisting of a pontoon type or double deck type roof, resting on the surface of the liquid contents and equipped with a closure seal, or seals, to close the space between the roof edge and containment wall. All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

(c) A vapor recovery system, consisting of a vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere and with all tank gauging and sampling devices gas-tight except when gauging or sampling is taking place.

(d) Other equipment of equal efficiency provided such equipment has been approved by the department.

(e) This rule shall not apply to any oil-effluent water separator used exclusively in conjunction with the production of crude oil.

(3) No person shall load or permit the loading of

gasoline into any stationary tank with a capacity of 250 gallons or more from any tank truck or trailer, except through a permanent submerged fill pipe, unless such tank is equipped with a vapor loss control device as described in (1) of this rule, or is a pressure tank as described in (1) of this rule.

(a) The provisions of the first paragraph of (3) shall not apply to the loading of gasoline into any tank having a capacity of 2,000 gallons or less, which was installed prior to June 30, 1971 nor any underground tank installed prior to June 30, 1971 where the fill line between the fill connection and tank is offset.

(b) A person shall not install any gasoline tank with a capacity of 250 gallons or more unless such tank is equipped as described in the first paragraph of (3).

(4) The provisions of this rule do not apply to any stationary tank which is used primarily for the fueling of implements of husbandry.

(5) Existing refineries normally processing less than 7,000 barrels per day of crude oil charge shall be exempt from the provisions of this rule.

(6) Refineries normally processing 7,000 barrels per day or more of crude oil charge shall comply with (1) of this rule by January 1, 1977.

(7) Facilities used exclusively for the production of crude oil are exempt from this rule. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1426 MOTOR VEHICLES (1) No person shall intentionally remove, alter or otherwise render inoperative, exhaust emission control, crank case ventilation or any other air pollution control device which has been installed as a requirement of federal law or regulation.

(2) No person shall operate a motor vehicle originally equipped with air pollution control devices as required by federal law or regulation unless such devices are in place and in operating condition. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72.)

16.8.1427 ODORS (1) No person shall cause, suffer, or allow any emissions of gases, vapors, or odors beyond his property line in such manner as to create a public nuisance.

(2) A person operating any business or using any machine, equipment, device or facility or process which discharges into the outdoor air any odorous matter or vapors, gases, dusts, or any combination thereof which create odors, shall provide, properly install, and maintain in good working order and in operation such odor control devices or procedures as may be specified by the department.

(3) No person shall operate any business or use any such

machine, equipment, device or facility in such manner as to create a public nuisance.

(4) Odor producing materials shall be so stored and handled that odors produced thereby do not create a public nuisance. No person shall accumulate such quantities of such materials as to permit spillage or other escape.

(5) Odor bearing gases, vapors, fumes, or dusts arising from materials in process shall be so confined at the point of origin as to prevent liberation of odorous matter. Confined gases, vapors, fumes, or dusts shall be treated before discharge to the atmosphere as required in (2) and (3).

(6) Whenever dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape so as to cause a public nuisance, the department may order that a building or buildings in which processing, handling, and storage are done be tightly closed and ventilated in such a way that all air and gases and air or gas-borne materials leaving the building are treated by incineration or other effective means for removal or destruction of odorous matter or other contaminants before discharge into the open air.

(7) No person shall operate or use any machine, equipment, device or facility for the reduction of animal matter unless all gases, vapors, and gas-entrained effluents from such facility are incinerated at a temperature of not less than 1200°F for a period of not less than 0.3 seconds, or processed in such manner as determined by the department to be equally or more effective for the purpose of air pollution control.

(8) A person incinerating or processing gases, vapors, or gas-entrained effluents pursuant to this rule shall provide, properly install and maintain in good working order and in operation, devices as specified by the department for indicating temperatures, pressure or other operating conditions. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; Eff. 12/31/72; AMD, Eff. 9/5/75; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1428 PROHIBITED MATERIALS FOR WOOD OR COAL RESIDENTIAL STOVES (1) No person may cause or authorize the use of the following materials to be combusted in any residential solid-fuel combustion device such as a wood, coal, or pellet stove or fireplace:

(a) food wastes;
(b) styrofoam and other plastics;
(c) wastes generating noxious odors;
(d) poultry litter;
(e) animal droppings;
(f) dead animals or dead animal parts;
(g) tires;
(h) asphalt shingles;

(i) tar paper;
(j) insulated wire;
(k) treated lumber and timbers including railroad ties;
(l) pathogenic wastes;
(m) colored newspaper or magazine print;
(n) hazardous wastes as defined by administrative rules found at ARM Title 16, chapter 44, subchapter 3; or
(o) chemicals. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1986 MAR p. 1021, Eff. 6/13/86; AMD, 1993 MAR p. 2530, Eff. 10/29/93.)

16.8.1429 INCORPORATIONS BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted another rule of the department or another agency of the state of Montana that appears in a different title or chapter of the Administrative Rules of Montana (ARM), the reference in this subchapter shall refer to the other rule in the ARM as such rule existed on June 24, 1993.

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR Part 60, Appendix A, method 6, entitled "determination of sulfur dioxide emissions from stationary sources" and method 8, entitled "determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources". Methods 6 and 8 are federal rules setting forth procedures for extracting gas samples from the emitting source and performing tests thereon to determine amounts of contaminants contained in such gases;

(b) 40 CFR Part 60, Appendix A, method 9, which sets forth a method for visual determination of the opacity of emissions from stationary sources;

(c) 40 CFR Part 60, Appendix B, performance specification 1, which sets forth specifications and test procedures for opacity continuous emission monitoring systems in stationary sources;

(d) 40 CFR 81.327, which sets forth the air quality attainment status designations for Montana;

(e) 40 CFR Part 60, which pertains to standards of performance for new stationary sources and modifications;

(f) 40 CFR Part 61, which pertains to emission standards for hazardous air pollutants;

(g) The Administrative Rules of Montana found at Title 16, chapter 44, subchapter 3, which set forth the rules

pertaining to the identification and listing of hazardous waste;

(h) The standard industrial classification manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy.

(i) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, 836 Front St., Helena, MT 59620. Copies of the federal materials may also be obtained at: EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460; at the libraries of each of the 10 EPA Regional Offices; as supplies permit from the US Environmental Protection Agency, Research Triangle Park, NC 27711; and for purchase from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical Information Service (order no. PB 87-1000-12). (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1993 MAR p. 2530, Eff. 10/29/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94; AMD, 1995 MAR p. 1572, Eff. 8/11/95.)

16.8.1430 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Airborne particulate matter" means any particulate matter discharged into the outdoor atmosphere which is not discharged from the normal exit of a stack or chimney for which a source test can be performed in accordance with 40 CFR Part 60, Appendix A, method 5 (determination of particulate emissions from stationary sources).

(2) "Animal matter" means any product or derivative of animal life.

(3) "Best available control technology" means an emission limitation (including a visible emission standard), based on the maximum degree of reduction for each air pollutant which would be emitted from any source or alteration which the department, on a case-by-case basis, taking into account energy, environment, and economic impacts and other costs, determines is achievable for such sources or alterations through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event shall application of best available control technology result in emission of any air contaminant which would exceed the emissions allowed by any applicable standard under this chapter. If the department

determines that technological or economic limitations on the application of measurement methodology to a particular class of sources or alterations would make the imposition of an emission standard infeasible, it may instead prescribe a design, equipment, work practice or operational standard or combination thereof, to require the application of best available control technology. Such standard shall, to the degree possible, set forth the emission reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

(4) "Existing fuel burning equipment" means fuel burning equipment constructed or installed prior to November 23, 1968.

(5) "Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same 2-digit code) as described in the standard industrial classification manual, 1987.

(6) "Lowest achievable emission rate (LAER)" means, for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Part 60 and Part 61.

(7) "New fuel burning equipment" means fuel burning equipment constructed, installed or altered after November 23, 1968.

(8) "Process weight" means the total weight of all materials introduced into any specific process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

(9) "Process weight rate" means the rate established as follows:

(a) For continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the

number of hours of such period or portion thereof.

(b) For cyclical or batch operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emissions shall apply.

(10) "Reasonable precautions" mean any reasonable measures to control emissions of airborne particulate matter. Determination of what is reasonable will be accomplished on a case-by-case basis taking into account energy, environmental, economic, and other costs.

(11) "Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques that are determined on a case-by-case basis to be reasonably available, taking into account the necessity of imposing such controls in order to attain and maintain a national or Montana ambient air quality standard, the social, environmental, and economic impact of such controls, and alternative means of providing for attainment and maintenance of such standard.

(12) "Reduction" means any heated process, including rendering, cooking, drying, dehydrating, digesting, evaporating, and protein concentrating. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1993 MAR p. 2530, Eff. 10/29/93.)

Sub-Chapter 15

Emission Standards for Existing Aluminum Plants

16.8.1501 DEFINITIONS For the purposes of this rule, the following definitions apply:

(1) "Aluminum manufacturing" means the electrolytic reduction of alumina (aluminum oxide) to aluminum.

(2) "Emission" means a release into the outdoor atmosphere of total fluorides.

(3) "Existing primary aluminum reduction plant" means any facility manufacturing aluminum, by electrolytic reduction, which was in existence and operating on February 26, 1982.

(4) "Owner or operator" means any person who owns, leases, operates, controls, or supervises an existing primary aluminum reduction plant.

(5) "Pot" means a reduction cell.

(6) "Potroom" means a building unit which houses a group of electrolytic cells in which aluminum is produced.

(7) "Potroom group" means an uncontrolled potroom, a potroom which is controlled individually as a group of potrooms or potroom segments ducted to a common control system.

(8) "Total fluorides" means all fluoride compounds as measured by methods approved by the department. (History: Sec. 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82; AMD, 1989 MAR p. 270, Eff. 2/10/89.)

16.8.1502 STANDARDS FOR FLUORIDE (1) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere from any existing primary aluminum reduction plant of any gasses which contain total fluorides in excess of 1.3 kg/Mg (2.6 lb/ton) of aluminum produced at Soderberg plants averaged over any calendar month. (History: Sec. 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82.)

16.8.1503 STANDARD FOR VISIBLE EMISSIONS (1) No owner or operator subject to the provisions of this rule may cause the emission into the atmosphere from any potroom group of any gasses or particles which exhibit 10% opacity or greater as determined by EPA Reference Method 9 in Appendix A of 40 CFR, Part 60, (July 1, 1987 edition).

(2) For the purposes of this rule, the board hereby adopts and incorporates herein by reference Method 9 of Appendix A of 40 CFR Part 60 (July 1, 1987 edition). Method 9 is included in the appendix to a federal agency rule and sets forth the method for visual determination of the opacity of emissions from stationary sources including the determination of plume opacity by qualified observers. The method also includes procedures for the training and certification of obser-

vers and procedures to be used in the field for determination of plume opacity. A copy of Test Method 9 may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620. (History: Sec. 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82, AMD; 1989 MAR p. 270, Eff. 2/10/89.)

16.8.1504 MONITORING AND REPORTING (1) For the purpose of this rule the board hereby adopts and incorporates by reference 40 CFR 60.195 which sets forth test methods and procedures for primary aluminum reduction plants. A copy of this incorporated material may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

(2) An owner or operator shall submit by May 1, 1982 to the department a detailed monitoring program including, but not limited to, a description of monitoring equipment, monitoring procedures, monitoring frequency, and any other information requested by the department. The monitoring program must be approved by the department and may be revised from time to time by the department.

(3) In order to be approved by the department, the monitoring plan must meet the requirements of 40 CFR 60.195 or equivalent requirements established by the department.

(4) An owner or operator of an existing primary aluminum reduction plant shall submit a quarterly emission report to the department, no later than 45 days following the end of the calendar quarter reported, in a format and reporting parameters as requested by the department. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82.)

16.8.1505 STARTUP AND SHUTDOWN (1) Operations during periods of startup and shutdown shall not constitute representative conditions for the purpose of determining compliance with this rule, nor shall emissions in excess of the levels required in ARM 16.8.1502 and 16.8.1503 during periods of startup and shutdown be considered a violation of the limits in ARM 16.8.1502 and 16.8.1503.

(2) At all times, including periods of startup and shutdown, owners and operators shall, to the extent practicable, maintain and operate any existing primary aluminum reduction plant including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

(3) Any owner or operator of an existing primary aluminum reduction plant shall maintain records of the occurrence and duration of any startup or shutdown in the operation of an affected facility and any period during which a continuous moni-

toring system or monitoring device is inoperative. (History: Sec. 75-2-111 and 75-2-203, MCA; IMP, Sec. 75-2-203, MCA; NEW, 1982 MAR p. 390, Eff. 2/26/82.)

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Sub-Chapter 16

Combustion Device Tax Credit

16.8.1601 CERTIFICATION AND TESTING STANDARDS (1) For the purposes of this rule, the phrase "pellet conversion unit" is defined as any device which a resident individual taxpayer installs on a stove or furnace for the purpose of modifying the stove or furnace so that it is capable of burning wood pellets or other nonfossil biomass pellets utilizing an automatic feed system.

(2) Pursuant to 15-32-102(5)(A)(II), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.). In determining if a pellet conversion unit meets the particulate emission rate set forth in 15-32-102(5)(A)(II), MCA, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(3) Pursuant to 15-32-102(5)(A)(III), MCA, and for the purposes of certifying the air-to-fuel ratio of any brand and model of noncatalytic stove or furnace that is specifically designed to burn wood pellets or other nonfossil biomass pellets, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.). In determining if a pellet conversion unit meets the requirements in 15-32-102(5)(A)(III), MCA, concerning air-to-fuel ratio, the pellet conversion unit and the particular model and brand of stove or furnace to which it is attached shall be tested together as a combined unit.

(4) Pursuant to 15-32-102(5)(B), MCA, and for the purposes of certifying the particulate emission rate of any brand and model of noncatalytic stove or furnace that burns wood or other nonfossil biomass, the department shall use any available test data, generally gathered by the manufacturer, which was obtained in accordance with the testing criteria and procedures contained in 40 CFR Part 60, subpart AAA (1990 ed.).

(5) The department shall maintain a current list of the following:

(a) all noncatalytic stoves or furnaces that are specifically designed to burn wood pellets or other nonfossil biomass pellets which have demonstrated a particulate emission rate of less than 4.1 grams per hour when tested in accordance with the

criteria and procedures contained in (2), above; and

(b) all noncatalytic stoves or furnaces that are specifically designed to burn wood pellets or other nonfossil biomass pellets which have demonstrated an air-to-fuel ratio of 35 to 1 or greater when tested in accordance with the criteria and procedures contained in (3), above; and

(c) all noncatalytic stoves or furnaces that burn wood or other nonfossil biomass which have demonstrated a particulate emission rate of less than 4.1 grams per hour when tested in accordance with the criteria and procedures contained in (4), above.

(6) The department hereby adopts and incorporates by reference 40 CFR Part 60, subpart AAA, which establishes criteria and procedures for testing particulate emissions and the air-to-fuel ratio for wood stoves and furnaces. Copies of 40 CFR Part 60, subpart AAA may be obtained from the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. (History: Sec. 15-32-203, MCA; IMP, Sec. 15-32-102, 15-32-201, MCA; NEW, 1985 MAR p. 2004, Eff. 12/27/85; AMD, 1991 MAR p. 1935, Eff. 10/18/91.)

16.8.1602 CERTIFIED STOVES IS REPEALED (History: Sec. 15-32-203, MCA; IMP, Sec. 15-32-102, 15-32-201, MCA; NEW, 1985 MAR p. 2004, Eff. 12/27/85; REP, 1991 MAR p. 1935, Eff. 10/18/91.)

Sub-Chapter 17

Permit Requirements for Major Stationary Sources or Modifications Located Within Nonattainment Areas

16.8.1701 DEFINITIONS For the purpose of this subchapter:

(1)(a) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with (b)-(d) of this section.

(b) Actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and which is representative of normal source operation. The department may determine that a different time is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) If the department is unable to determine actual emissions consistent with (1)(b), above, the department may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) "Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as set forth in ARM 16.8.1423 or 16.8.1424;

(b) The applicable emissions limitation contained in the Montana state implementation plan, including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(3) "Begin actual construction" means, in general, initiation of physical on-site construction activities of a permanent nature on an emissions unit. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(4) "Building, structure, facility, or installation"

means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., having the same two-digit code) as described in the standard industrial classification manual, 1987.

(5) "Commence", as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(a) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(b) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(6) "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

(7) "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the FCAA.

(8) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(9) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(10) "Lowest achievable emission rate" means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is

achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance under 40 CFR Part 60 and Part 61.

(11)(a) "Major modification" means any physical change in, or change in the method of, operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the FCAA.

(b) Any net emissions increase that is considered significant for volatile organic compounds is considered significant for ozone.

(c) A physical change or change in the method of operation does not include:

(i) routine maintenance, repair and replacement;

(ii) use of an alternative fuel or raw material by reason of an order under (2)(a) and (2)(b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. sec. 791, et seq. (1988), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act, 16 U.S.C. sec. 791a, et seq. (1988 & Supp. III 1991);

(iii) use of an alterative fuel by reason of an order or rule under sec. 7425 of the FCAA;

(iv) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) use of an alternative fuel or raw material by a stationary source which:

(A) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR, Part 51, subpart I, or sec. 51.166; or

(B) the source is approved to use under any permit issued under regulations approved pursuant to 40 CFR 51.165;

(vi) an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable air quality preconstruction permit condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR, Part 51, subpart I, or sec. 51.166;

(vii) any change in ownership at a stationary source.

(12)(a) "Major stationary source" means:

(i) any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the FCAA; or

(ii) any stationary source of air pollutants located in a serious particulate matter (PM-10) nonattainment area which emits, or has the potential to emit, 70 tons per year or more of PM-10; or

(iii) any physical change that would occur at a stationary source not qualifying under (i) or (ii) above as a major stationary source, if the change would constitute a major stationary source by itself.

(b) The fugitive emissions of a stationary source will not be included in determining, for any of the purposes of this subchapter, whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and
(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under secs. 7411 or 7412 of the FCAA.

(13) "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality

control laws and regulations which are part of the Montana state implementation plan.

(14)(a) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

(i) Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

(ii) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commenced, and the date that the increase from the particular change occurs.

(c) An increase or decrease in actual emissions is creditable only if the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165 (July 1, 1993 ed.), which permit is in effect when the increase in actual emissions from the particular change occurs.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) it is federally enforceable at and after the time that actual construction on the particular change begins;

(iii) the department has not relied on it in issuing any air quality preconstruction permit under regulations approved pursuant to 40 CFR Part 51, subpart I (July 1, 1993 ed.), or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(iv) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(15) "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of

operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(16) "Reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant which are required by the FCAA or the administrator for attainment of the applicable national ambient air quality standard by the date required in sec. 172(a) of the FCAA.

(17) "Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this chapter, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(18) "Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide:	100 tons per year (tpy)
Nitrogen oxides:	40 tpy
Sulfur dioxide:	40 tpy
Particulate matter:	25 tpy of particulate matter emissions
or	15 tpy of PM-10 emissions
Lead:	0.6 tpy

(19) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the FCAA.

(20)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluo-

romethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear completely fluorinated alkanes;

(ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.1702 INCORPORATION BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990);

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR 81.327, which sets forth the air quality attainment status designations for Montana;

(b) 40 CFR Part 60, which sets forth standards of performance for new stationary sources;

(c) 40 CFR Part 61, which sets forth emission standards for hazardous air pollutants;

(d) Subchapter I, part D, subpart IV of the Federal Clean Air Act, 42 USC sec. 7401 et seq., which establishes additional requirements for particulate matter nonattainment areas;

(e) Sec. 7503 of the Federal Clean Air Act, 42 USC sec. 7401 et seq., which establishes permit requirements for permit programs in nonattainment areas;

(f) The standard industrial classification manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy.

(g) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Health and Environmental Sciences, 836 Front St., Helena, MT 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-100012). (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94.)

16.8.1703 WHEN AIR QUALITY PRECONSTRUCTION PERMIT REQUIRED (1) Any new major stationary source or major modification which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, obtain from the department an air quality preconstruction permit in accordance with subchapter 11 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) which would locate anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 and which is major for the pollutant for which the area is designated nonattainment, shall, prior to construction, still be required to obtain an air quality preconstruction permit and comply the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and with all applicable requirements of this subchapter.

(2) Any source or modification located anywhere in an area designated as nonattainment for a national ambient air quality standard under 40 CFR 81.327 which becomes a major stationary source or major modification for the pollutant for which the area is designated nonattainment solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant (such as a restriction on hours of operation) shall obtain from the department an air quality preconstruction permit as though construction had not yet commenced on the source or modification, in accordance with subchapter 11 and all requirements of this subchapter. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.1704 ADDITIONAL CONDITIONS OF AIR QUALITY PRECONSTRUCTION PERMIT (1) The department shall not issue an air quality preconstruction permit required under ARM 16.8.1703, unless the requirements of subchapter 11 and the following additional conditions are met:

(a) The permit for the new source or modification contains an emission limitation which constitutes the lowest achievable emissions rate for such source.

(b) The applicant certifies that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the state of Montana are in compliance with all applicable emission limitations and standards under the FCAA or are in compliance with an expeditious schedule of compliance which is federally enforceable or contained in a court decree.

(c) The new source obtains from existing sources emission

reductions (offsets), expressed in tons per year, which provide both a positive net air quality benefit in the affected area in accordance with ARM 16.8.1705(6)-(8), and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater. The emissions reductions (offsets) required under this subsection must be:

(i) obtained from existing sources in the same nonattainment area as the proposed source, except as specified in ARM 16.8.1705(6) (whether or not they are under the same ownership);

(ii) subject to the provisions of ARM 16.8.1705;

(iii) sufficient to assure that there will be reasonable progress toward attainment of the applicable national ambient air quality standard;

(iv) for the same pollutant (e.g., carbon monoxide increases may only be offset against carbon monoxide reductions);

(v) permanent, quantifiable, and federally enforceable; and

(vi) reductions in actual emissions.

(d) The air quality preconstruction permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.

(e) The applicant submits an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source that demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification.

(2) Any growth allowances which were included in an applicable state implementation plan prior to November 15, 1990 for the purpose of allowing for construction or operation of a new major stationary source or major modification shall not be valid for use in any area that received or receives a notice from the administrator that the applicable state implementation plan containing such allowances is substantially inadequate.

(3) The requirements of (1)(a) and (1)(c), above, shall only apply to those pollutants for which the major stationary source or major modification is major and for which the area has been declared nonattainment.

(4) The issuance of an air quality preconstruction permit shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements contained in or pursuant to local, state or federal law. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.1705 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) Pursuant to sec. 7503 of the FCAA, emission offsets in nonattainment areas are required to be in the form of, and against, actual emissions. Actual emissions preceding the filing of the application to construct or modify a source are the baseline for determining credit for emission and air quality offsets, as determined in compliance with this subchapter.

(2) Where the emission limitation under the Montana state implementation plan allows greater emissions than the actual emissions of the source, emission offset credit will be allowed only for control below the actual emissions.

(3) For an existing fuel combustion source, credit shall be based on the actual emissions for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offsets credit based on the actual emissions for the fuels involved is not acceptable, unless the air quality preconstruction permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department shall ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

(4) Emission reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the Montana state implementation plan, and if such date is on or after the date of the most recent emissions inventory used in the plan's demonstration of attainment. Where the plan does not specify a cutoff date for shutdown credits, the date of the most recent emissions inventory or attainment demonstration, as the case may be, shall apply. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this section (4), the department may choose to consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current "existing" emissions the emissions from such previously shutdown or curtailed sources. Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source's air quality application is filed, or if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions described

earlier in this section (4) are observed.

(5) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977).

(6) All emission reductions claimed as offset credit shall be federally enforceable.

(7) Emission offsets may only be obtained from the same source or other sources in the same nonattainment area, except that the department may allow the owner or operator of a proposed source to obtain such emission reductions in another nonattainment area if:

(a) The other nonattainment area has an equal or higher nonattainment classification for the same pollutant than the area in which the proposed source will locate; and

(b) Emissions from the other nonattainment area contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed source will locate.

(8) In the case of emission offsets involving oxides of nitrogen, offsets will generally be acceptable if obtained from within the same nonattainment area as the new source or from other nonattainment areas which meet the requirements of (6). However, if the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available.

(9) In the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxides, areawide mass emission offsets are not acceptable and the applicant shall perform atmospheric simulation modeling to ensure that the emission offsets provide a positive net air quality benefit. However, the department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height.

(10) Credits for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any air quality preconstruction permit under subchapters 9, 11, 17, and 18, or Montana has not relied on it in a demonstration of attainment or reasonable further progress.

(11) Production of and equipment used in the exploration, production, development, storage, or processing of oil and natural gas from stripper wells, are exempt from the additional permitting requirements of subchapter I, part D, subpart IV of the FCAA, and the application of these additional permitting

requirements in this subchapter and subchapter 18 to any nonattainment area designated as serious for particulate matter (PM-10). These sources must comply with all other requirements of sec. 173 of the FCAA and this subchapter and subchapter 18.

(12) Emission reductions otherwise required by any applicable rule, regulation, air quality preconstruction permit condition or the FCAA are not creditable as emissions reductions for the purposes of the offset requirement in ARM 16.8.1704(1)(c). Incidental emission reductions which are not otherwise required by any applicable rule, regulation, air quality preconstruction permit or the FCAA shall be creditable as emission reductions for such purposes if such emission reduction meets the requirements of this rule. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

Sub-Chapter 18

Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Located Within Attainment or Unclassified Areas

16.8.1801 DEFINITIONS For the purpose of this subchapter:

(1) The definitions contained in ARM 16.8.1701 shall be applicable.

(2) "Cause or contribute" means, in regard to an ambient air quality impact caused by emissions from a major source or modification, an ambient air quality impact that exceeds the significance level as defined in (3) of this rule, for any pollutant at any location.

(3) "Significance level" means, for any of the following pollutants, an ambient air quality impact greater than any of the averages cited below:

(a) For sulfur dioxide:

(i) an annual average of 1.0 micrograms per cubic meter;

(ii) a 24-hour average of 5.0 micrograms per cubic meter; or

(iii) a 3-hour average of 25.0 micrograms per cubic meter.

(b) For PM-10:

(i) an annual average of 1.0 micrograms per cubic meter; or

(ii) a 24-hour average of 5.0 micrograms per cubic meter.

(c) For nitrogen dioxide, an annual average of 1.0 micrograms per cubic meter.

(d) For carbon monoxide:

(i) an 8-hour average of 0.5 milligrams per cubic meter; or

(ii) a 1-hour average of 2.0 milligrams per cubic meter.

(History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.1802 INCORPORATION BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990);

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) 40 CFR 81.327, which sets forth the air quality attainment status designations for Montana;

(b) 40 CFR Part 60, which sets forth standards of performance for new stationary sources;

(c) 40 CFR Part 61, which sets forth emission standards for hazardous air pollutants;

(d) Subchapter I, part D, subpart IV of the Federal Clean Air Act, 42 USC sec. 7401 et seq., which establishes additional requirements for particulate matter nonattainment areas;

(e) Sec. 7503 of the Federal Clean Air Act, 42 USC sec. 7401 et seq., which establishes permit requirements for permit programs in nonattainment areas;

(f) The standard industrial classification manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy.

(g) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, 836 Front St., Helena, MT 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington, DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The standard industrial classification manual (1987) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (order no. PB 87-100012). (History: 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94.)

16.8.1803 WHEN AIR QUALITY PRECONSTRUCTION PERMIT REQUIRED (1) Any new major stationary source or major modification which would locate anywhere in an area designated as attainment or unclassified for a national ambient air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall obtain from the department an air quality preconstruction permit prior to construction in accordance with subchapters 9 and 11 and all requirements contained in this subchapter if applicable. A major stationary source or major modification exempted from the requirements of subchapter 11 under ARM 16.8.1102(1) which would locate anywhere in an area designated as attainment or unclassified for a national ambient

air quality standard under 40 CFR 81.327 and which would cause or contribute to a violation of a national ambient air quality standard for any pollutant at any locality that does not or would not meet the national ambient air quality standard for that pollutant, shall, prior to construction, still be required to obtain an air quality preconstruction permit and comply with the requirements of ARM 16.8.1105, 16.8.1107, and 16.8.1109 and all applicable requirements of this subchapter.

(2) In the absence of emission reductions compensating for the adverse impact of the source, the air quality preconstruction permit will be denied. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1804 ADDITIONAL CONDITIONS OF AIR QUALITY PRECONSTRUCTION PERMIT (1) The department will not issue an air quality preconstruction permit required under ARM 16.8.1803 unless the requirements of subchapters 9 and 11 and the following additional conditions are met:

(a) The new source is required to meet an emission limitation, as more fully described in (2) and (3) below, which specifies the lowest achievable emission rate for such source;

(b) The applicant certifies that all existing major stationary sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the state of Montana are in compliance with all applicable emission limitations and standards under the FCAA or are in compliance with an expeditious schedule of compliance which is federally enforceable or contained in a court decree;

(c) The new source must obtain from existing sources emission reductions (offsets), expressed in tons per year, which provide both a positive net air quality benefit in the affected area as determined in accordance with (3) below, ARM 16.8.1805 and 16.8.1806, and a ratio of required emission offsets to the proposed source's emissions of 1:1 or greater; and

(d) The air quality preconstruction permit contains a condition requiring the source to submit documentation, prior to commencement of operation that the offsets required in the permit have occurred.

(2) If the department determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an enforceable numerical emission standard infeasible, the department may, instead, prescribe a design, operational or equipment standard. In such cases, the department shall make its best estimate as to the emission rate that will be achieved, and must take such steps as are necessary to ensure

that this rate is federally enforceable. Any air quality preconstruction permit issued without an enforceable numerical emission standard must contain enforceable conditions which assure that the design characteristics or equipment will be properly maintained (or that the operational conditions will be properly performed) so as to continuously achieve the assumed degree of control. As used in this subchapter, the term "emission limitation" shall also include such design, operational, or equipment standards.

(3) The requirements of (1)(a) and (1)(c), above, shall only apply to those pollutants for which the major stationary source or major modification is major and for which the source is causing or contributing to a violation of a national ambient air quality standard.

(4) If the emissions from the proposed source would cause a new violation of a national ambient air quality standard but would not contribute to an existing violation, the new source must meet a more stringent and federally enforceable emission limitation, as more fully described in (2), above, and/or control existing sources below allowable levels through federally enforceable methods so that the source will not cause a violation of any national ambient air quality standard. The new emission limitation must be accomplished prior to the new source's startup date.

(5) The issuance of an air quality preconstruction permit does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the Montana state implementation plan and any other requirements of local, state or federal law.

(6) Emission reductions (air quality offsets) under (1)(c) above must also comply with the additional requirements for determining the baseline and magnitude of emission reductions (air quality offsets) contained in ARM 16.8.1704(c) and 16.8.1705, except that 16.8.1705(6)-(8) shall not be applicable to offsets required under this subchapter. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93, AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1805 REVIEW OF SPECIFIED SOURCES FOR AIR QUALITY IMPACT (1) For "stable" air pollutants (i.e., sulfur dioxide, particulate matter and carbon monoxide), the determination of whether a source will cause or contribute to a violation of a national ambient air quality standard generally should be made on a case-by-case basis as of the proposed new source's startup date using the source's allowable emissions in an atmospheric simulation model (unless a source will clearly impact on a receptor which exceeds a national ambient air quality standard).

(2) For sources of nitrogen oxides, the initial determination of whether a source would cause or contribute to a violation of the national ambient air quality standard for nitrogen dioxide should be made using an atmospheric simulation model assuming all the nitric oxide emitted is oxidized to nitrogen dioxide by the time the plume reaches ground level. The initial concentration estimates may be adjusted if adequate data are available to account for the expected oxidation rate. (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

16.8.1806 BASELINE FOR DETERMINING CREDIT FOR EMISSIONS AND AIR QUALITY OFFSETS (1) For the purpose of this subchapter the following requirements shall apply:

(a) The requirements of ARM 16.8.1705, except that 16.8.1705(7)-(9) is not applicable to offsets required under this subchapter;

(b) Emission offsets must be reductions in actual emissions for the same pollutant obtained from the same source or other sources which are located in the same general area of the proposed major stationary source or modification, and that contribute to or would contribute to the violation of the National Ambient Air Quality Standard;

(c) In the case of emission offsets involving volatile organic compounds and oxides of nitrogen, offsets will generally be acceptable if they are obtained from within the areas specified in (b). If the proposed offsets would be from sources located at considerable distances from the new source, the department shall increase the ratio of the required offsets and require a showing by the applicant that nearby offsets were investigated and reasonable alternatives were not available; and

(d) In the case of emission offsets involving sulfur dioxide, particulates, and carbon monoxide, areawide mass emission offsets are not acceptable, and the applicant shall perform atmospheric simulation modeling to ensure that emission offsets provide a positive net air quality benefit. The department may exempt the applicant from the atmospheric simulation modeling requirement if the emission offsets provide a positive net air quality benefit, are obtained from an existing source on the same premises or in the immediate vicinity of the new source, and the pollutants disperse from substantially the same effective stack height.

(e) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). (History: Sec. 75-2-111, 75-2-203, MCA; IMP, Sec. 75-2-202, 75-2-203, 75-2-204, MCA; NEW, 1993 MAR p. 2919, Eff. 12/10/93.)

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Sub-Chapter 19

Air Quality Permit Application, Operation and Open Burning Fees

16.8.1901 DEFINITIONS For the purposes of this subchapter:

(1) "Source(s) of air contaminants" shall mean all air contaminant emission points, including fugitive emissions, located on one or more contiguous or adjacent properties and under common control or ownership. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-211, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91.)

16.8.1902 ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding the air quality permit fees which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the tier system to be implemented, and the status of any anticipated rulemaking activity necessary to adopt the new fees. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-211, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91.)

16.8.1903 AIR QUALITY OPERATION FEES (1) An annual air quality operation fee must, as a condition of continued operation, be submitted to the department by:

(a) each source of air contaminants holding an air quality permit, excluding an open burning permit, issued by the department; and

(b) each source of air contaminants which will be required to obtain a permit pursuant to sec. 7661a of the Federal Clean Air Act, 42 USC 7401, et seq., as amended, and which does not otherwise hold an air quality permit issued by the department.

(2)(a) Annually, the department shall give written notice of the amount of the air quality operation fee to be assessed and the basis for such fee assessment to the owner or operator of the air contaminant source.

(b) The air quality operation fee is due 30 days after receipt of the notice unless the fee assessment is appealed pursuant to ARM 16.8.1906. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due 30 days after receipt of the notice. Any remaining fee which may be due after completion of the appeal is immediately due and payable upon issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later.

(c) If an owner or operator assessed an air quality operation fee fails to pay the required fee (or any required portion of an appealed fee) within 90 days after the due date of the fee, the department may impose an additional assessment of 15% of the fee (or any required portion of an appealed fee) or $100, whichever is greater, plus interest on the fee (or any required portion of an appealed fee) computed at the interest rate established under 15-31-510(3), MCA.

(3) The air quality operation fee is based on the actual or estimated actual amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of $250 or a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by $10.56; plus
tons of sulfur dioxide emitted,
multiplied by $10.56; plus
tons of lead emitted,
multiplied by $10.56; plus
tons of oxides of nitrogen emitted,
multiplied by $2.64; plus
tons of volatile organic compounds emitted,
multiplied by $2.64.

(4) An air quality operation fee is separate and distinct from any air quality permit application fee required to be submitted to the department pursuant to ARM 16.8.1905 by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(5) The annual assessment and collection of the air quality operation fee, as described above, shall take place on a calendar year basis. The department may insert into any final permit issued after the effective date of these rules such conditions as may be necessary to require the payment of an air quality operation fee on a calendar year basis, including provisions which pro-rate the required fee amount. (History: Sec. 75-2-111, 75-2-220, MCA; IMP, Sec. 75-2-211, 75-2-220, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91; AMD, 1992 MAR p. 2390, Eff. 10/30/92; AMD, 1993 MAR p. 2531, Eff. 10/29/93; AMD, 1994 MAR p. 3189, Eff. 12/23/94; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1904 ADDITIONAL AIR QUALITY OPERATION FEES REQUIRED TO FUND SPECIFIC ACTIVITIES OF THE DEPARTMENT DIRECTED AT A PARTICULAR GEOGRAPHICAL AREA (1) The board may order the assessment of additional air quality operation fees to fund specific activities of the department directed at a particular geographical area. These activities may include emissions or ambient monitoring, preparation of generally applicable regulations or guidance, modeling analyses or demonstrations, emissions inventories or emissions tracking. The additional

air quality operation fees may be levied only on those sources of air contaminants that are within or believed by the department to be impacting the particular geographical area.

(2) Before ordering the assessment described in (1) above, the board must determine, after opportunity for hearing, that:

(a) the activities to be funded by the additional operation fee assessments are necessary for the administration or implementation of the department's duties under Title 75, chapter 2, MCA; and

(b) the assessments apportion the required funding in an equitable manner; and

(c) the department has obtained legislative authorization for the expenditure and the necessary appropriation. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-211, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91.)

16.8.1905 AIR QUALITY PERMIT APPLICATION FEES.

(1) Concurrent with the submittal of an air quality permit application, as required in ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), or ARM Title 16, chapter 8, subchapter 9 (Prevention of Significant Deterioration of Air Quality), the applicant shall submit an air quality permit application fee.

(2) A permit application is incomplete until the proper application fee is paid to the department. If the department determines that the air quality permit application fee submitted with the air quality permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be submitted for the application to be processed. If the fee assessment is appealed to the board pursuant to ARM 16.8.1906, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result is immediately due and payable.

(3) Air quality permit application fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 16.8.1903 by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(4) The air quality permit application fee is based on the estimated amount of air pollutants to be emitted annually from the source of air contaminants. The estimated amount of air pollutants to be emitted annually is determined according to the emissions inventory included in the permit application. Permit application fees may not be assessed for that amount of

emissions which are covered by either an air quality permit in existence at the time of the application, or an air quality permit application which is pending at the time of the application and for which the appropriate fee has been paid. However, the department may assess the minimum fee for those permit applications that do not result in an increase in emissions.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by $10.56; plus
tons of sulfur dioxide emitted,
multiplied by $10.56; plus
tons of lead emitted,
multiplied by $10.56; plus
tons of oxides of nitrogen emitted,
multiplied by $2.64; plus
tons of volatile organic compounds emitted,
multiplied by $2.64;

(b) or a minimum fee of:

(i) $1000 for sources of air contaminants subject to ARM 16.8.945 et seq. (Prevention of Significant Deterioration of Air Quality), or those sources of air contaminants which are major stationary sources or major modifications [as defined in ARM 16.8.945(20) and (22)], and are seeking to locate within an area which is designated as nonattainment in 40 CFR 81.327 [adopted by incorporation in ARM 16.8.1702(2)(a)] for any air contaminant;

(ii) $1000 for sources of air contaminants required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11 (Permit, Construction and Operation of Air Contaminant Sources), with a potential to emit greater than 250 tons of any pollutant in a year; or

(iii) $250 for all other sources of air contaminants, not subject to (b)(i) or (ii) above, required to obtain an air quality permit under ARM Title 16, chapter 8, subchapter 11. (History: Sec. 75-2-111, 75-2-220, MCA; IMP, Sec. 75-2-211, 75-2-220, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91; AMD, 1993 MAR p. 2531, Eff. 10/29/93; AMD, 1994 MAR p. 3189, Eff. 12/23/94; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.1906 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) The department's fee assessment may be appealed by the owner or operator of a source of air contaminants to the board of environmental review within 20 days of:

(a) receipt of the fee assessment notice described in ARM 16.8.1903(2) (Operation Fees); or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit application fee pursuant to ARM 16.8.1905(2) (Permit Applica-

tion Fees) or ARM 16.8.1908(3) (Air Quality Open Burning Fees).

(2) An appeal may be initiated pursuant to (1) above by filing with the board an affidavit setting forth the grounds for such appeal and requesting a hearing before the board. An appeal must be based on the allegation that the department's fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board and contained in this rule.

(3) Any hearing before the board concerning the department's fee assessment must be conducted according to the contested case provisions of the Montana Administrative Procedure Act.

(4) Nothing in these rules may be construed as preventing the applicant for an air quality permit from submitting to the department that portion of the applicable fee which has been appealed during the pendency of the appeal proceedings before the board. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-211, MCA; NEW, 1991 MAR p. 2606, Eff. 12/27/91; AMD, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1992 MAR p. 2285, Eff. 10/16/92.)

16.8.1907 AIR QUALITY OPEN BURNING FEES (1) Concurrently with the submittal of an air quality major open burning permit application, as required in ARM Title 16, chapter 8, subchapter 13 (Open Burning), 16.8.1304 (Major Open Burning Source Restrictions), the applicant shall submit an air quality major open burning fee.

(2) Air quality major open burning fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to ARM 16.8.1903 or air quality permit application fee required to be submitted to the department pursuant to ARM 16.8.1905 by a source of air contaminants.

(3) An air quality major open burning permit application is incomplete until the proper air quality major open burning fee is paid to the department. If the department determines that the air quality major open burning fee submitted with the major open burning permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the major open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 16.8.1906, and if the fee deficiency is not corrected by the applicant, the major open burning permit application is incomplete until issuance of the board's decision or when the judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result of the decision is immediately due and payable.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual

amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:
tons of total particulate emitted in the previous appropriate calendar year,
multiplied by $9.75; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by $2.44; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by $2.44; or

(ii) a minimum fee of $250.

(b) The department may reduce or eliminate, as appropriate, the air quality major open burning fees to be collected from an applicant in recognition of the non-monetary contributions made by the applicant to the smoke management program. The department may recognize only those non-monetary contributions made by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304. To be accepted for the purpose of reducing an applicant's fees for the subsequent calendar year, a written claim for non-monetary contributions to the smoke management program must be filed with the department no later than 60 days after the close of the calendar year during which the non-monetary contributions were made by the applicant. The claim shall describe in detail both the nature of the non-monetary contributions and the dollar value of such contributions. The non-monetary contributions may consist of, but are not limited to, staff time and the use of equipment, supplies or space. The department may review the written claims that are submitted, and may adjust the dollar value of the non-monetary contributions based upon a finding that the value assigned to the contributions is not reasonable, the non-monetary contributions that were made were not reasonably related to the smoke management program, or both. In no case shall a source be reimbursed for non-monetary contributions in excess of their assessed open burning permit fee. (History: Sec. 75-2-111, MCA; IMP, Sec. 75-2-211, 75-2-220, MCA; NEW, 1992 MAR p. 2061, Eff. 9/11/92; AMD, 1994 MAR p. 2130, Eff. 8/12/94; AMD, 1995 MAR p. 1669, Eff. 8/25/95.)

16.8.1908 AIR QUALITY OPEN BURNING FEES FOR CONDITIONAL, EMERGENCY, CHRISTMAS TREE WASTE, AND COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS (1) Concurrent with the submittal of an air quality open burning permit application, as required in ARM Title 16, chapter 8, subchapter 13 (Open Burning), 16.8.1307 (Conditional Air Quality Open Burning Permits), 16.8.1308 (Emergency Open Burning Permits), 16.8.1309 (Christmas Tree Waste Open Burning Permits), and 16.8.1310 (Commercial Film Production Open Burning Permits), the applicant shall submit an air quality open burning fee.

(2) Air quality open burning fees are separate and distinct from any other air quality fee required to be submitted to the department pursuant to this subchapter. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(3) An air quality open burning permit application is incomplete until the proper air quality open burning fee is paid to the department. If the department determines that the air quality open burning fee submitted with the open burning permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM 16.8.1906, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or until judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result of the decision is immediately due and payable.

(4) The open burning air quality permit application fee shall be:

(a) $100 for a wood and wood byproduct trade waste open burning permit under ARM 16.8.1307;

(b) No fee is required for an untreated wood-waste open burning permit at a licensed landfill site under ARM 16.8.1307. The required fee for this activity is included in the solid waste management system licensing fee, submitted pursuant to ARM Title 16, chapter 14, subchapter 4;

(c) $100 for an emergency open burning permit under ARM 16.8.1308. A fee for an emergency open burning permit application need not be submitted with the initial oral request to the department, but must be submitted with the subsequent written application required under ARM 16.8.1308. Submittal of the fee is a condition of any authorization given by the department under ARM 16.8.1308, and the failure to submit the fee is considered a violation of such authorization and may be subject to enforcement action;

(d) $100 for a Christmas tree waste open burning permit under ARM 16.8.1309; and

(e) $100 for a commercial film production open burning permit under ARM 16.8.1310. (History: Sec. 75-2-111, 75-2-211, 75-2-220, MCA; IMP, Sec. 75-2-211, 75-2-220, MCA; NEW, 1992 MAR p. 2743, Eff. 10/16/92; AMD, 1994 MAR p. 2830, Eff. 10/28/94.)

Sub-Chapter 20

Operating Permit Program

16.8.2001 AIR QUALITY OPERATING PERMIT PROGRAM OVERVIEW (1) This subchapter provides for the establishment of a comprehensive air quality operating permit system consistent with the requirements of Title V of the FCAA and the federal operating permit program (57 FR 32250 July 21, 1992, to be codified as 40 CFR Part 70). These regulations, when viewed as a whole, are not invariably limited to the minimum federal requirements and do not invariably impose the strictest optional alternatives. No air quality operating permit issued under this subchapter may be less stringent than necessary to meet all applicable requirements.

(2) The requirements of this subchapter, including provisions regarding schedules for submission and approval or disapproval of air quality operating permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or in regulations promulgated pursuant to Title IV of the FCAA. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2002 DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Administrative permit amendment" means an air quality operating permit revision that:

(a) corrects typographical errors;

(b) identifies a change in the name, address, or phone number of any person identified in the air quality operating permit, or identifies a similar minor administrative change at the source;

(c) requires more frequent monitoring or reporting by the permittee;

(d) requires changes in monitoring or reporting requirements that the department deems to be no less stringent than current monitoring or reporting requirements;

(e) allows for a change in ownership or operational control of a source if the department has determined that no other change in the air quality operating permit is necessary, consistent with ARM 16.8.2019; or

(f) incorporates any other type of change which the department has determined to be similar to those revisions set forth in (a)-(e), above.

(2) "Affected source" means a source that includes one or more affected units under Title IV of the FCAA.

(3) "Affected states" means all states:

(a) that are contiguous to Montana and whose air quality may be affected by a source requiring an air quality operating

permit, permit modification or permit renewal; or

(b) that are within 50 miles of a source requiring an air quality operating permit, permit modification or permit renewal.

(4) "Affected unit" means a unit that is subject to emission reduction requirements or limitations under Title IV of the FCAA.

(5) "Air quality operating permit" or "permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to this subchapter.

(6) "Air quality operating permit modification" or "permit modification" means a revision to an air quality operating permit that does not meet the definition of an administrative permit amendment under this subchapter.

(7) "Air quality operating permit renewal" or "permit renewal" means the process by which an air quality operating permit is reissued at the end of its term.

(8) "Air quality permit revision" or "permit revision" means any air quality operating permit modification or administrative permit amendment.

(9) "Air quality preconstruction permit" means a permit issued, altered, or modified pursuant to subchapters 9, 11, 17, or 18 of this chapter.

(10) "Applicable requirement" means all of the following as they apply to emissions units in a source requiring an air quality operating permit (including requirements that have been promulgated or approved by the department or the administrator through rulemaking at the time of issuance of the air quality operating permit, but have future-effective compliance dates, provided that such requirements apply to sources covered under the operating permit):

(a) any standard, rule, or other requirement, including any requirement contained in a consent decree or judicial or administrative order entered into or issued by the department, that is contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(b) any federally enforceable term, condition or other requirement of any air quality preconstruction permit issued by the department under subchapters 9, 11, 17, and 18 of this chapter, or pursuant to regulations approved or promulgated through rulemaking under Title I of the FCAA, including parts C and D;

(c) any standard or other requirement under sec. 7411 of the FCAA, including sec. 7411(d);

(d) any standard or other requirement under sec. 7412 of the FCAA, including any requirement concerning accident prevention under sec. 7412(r)(7), but excluding the contents of any risk management plan required under sec. 7412(r);

(e) any standard or other requirement of the acid rain program under Title IV of the FCAA or regulations promulgated

thereunder;

(f) any requirements established pursuant to sec. 7661c(b) or sec. 7414(a)(3) of the FCAA;

(g) any standard or other requirement governing solid waste incineration, under sec. 7429 of the FCAA;

(h) any standard or other requirement for consumer and commercial products, under sec. 7511b(e) of the FCAA;

(i) any standard or other requirement for tank vessels, under sec. 7511b(f) of the FCAA;

(j) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator determines that such requirements need not be contained in an air quality operating permit;

(k) any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to sec. 7661c(e) of the FCAA; or

(l) any federally enforceable term or condition of any air quality open burning permit issued by the department under subchapter 13.

(11) "Designated representative" means a responsible person or official authorized by the owner or operator of an affected source and of all affected units at the source, to represent and legally bind each owner and operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a source, and the submission of and compliance with permits, permit applications, and compliance plans for the unit and all other matters pertaining to Title IV of the FCAA. Proof of such status shall be evidenced by a certificate of representation submitted pursuant to subpart B of 40 CFR Part 72, specifically 40 CFR 72.24 (58 FR 3590, January 11, 1993).

(12) "Draft air quality operating permit" or "draft permit" means the version of an air quality operating permit which the department offers for public participation under ARM 16.8.2024 or affected state review under ARM 16.8.2025.

(13) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the air quality operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of reasonable preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions allowable under the permit" means a federally enforceable air quality operating permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work prac-

tice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under sec. 7412(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(16) "FCAA" means the Federal Clean Air Act, as amended.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(18) "Final air quality operating permit" or "final permit" means the version of an air quality operating permit issued by the department that has completed all review procedures required by ARM 16.8.2014-16.8.2025.

(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "General air quality operating permit" or "general permit" means an air quality operating permit that meets the requirements of ARM 16.8.2016, covers multiple sources in a source category, and is issued in lieu of individual permits being issued to each source.

(21) "Hazardous air pollutant" means any air pollutant listed as a hazardous air pollutant pursuant to sec. 112(b) of the FCAA.

(22)(a) "Insignificant emissions unit" means any activity or emissions unit located within a source that:

(i) has a potential to emit less than 15 tons per year of any pollutant, other than a hazardous air pollutant listed pursuant to sec. 7412(b) of the FCAA or lead;

(ii) has a potential to emit of less than 500 pounds per year of lead;

(iii) does not have a potential to emit hazardous air pollutants listed pursuant to sec. 7412(b) in any amount; and

(iv) is not regulated by an applicable requirement.

(b) Fugitive sources associated with an emissions unit are to be quantified with that emissions unit and are not considered insignificant emission units.

(23) "Major source" means any stationary source (or any group of stationary sources that are located on one or more con-

tiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in (a)-(c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under sec. 7412 of the FCAA, which is defined as:

(i) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to sec. 7412(b) of the FCAA, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the department may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) for radionuclides, "major source" shall have the meaning specified by the department by rule.

(b) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plant;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totalling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) All other stationary source categories regulated by a standard promulgated under secs. 7411 or 7412 of the FCAA, but only with respect to those air pollutants that have been regulated for that category;

(c) For particulate matter (PM-10) nonattainment areas classified as "serious" under Title I of the FCAA or regulations promulgated thereunder, sources with the potential to emit 70 tons per year or more of PM-10.

(24)(a) "Non-federally enforceable requirement" means the following as they apply to emissions units in a source requiring an air quality operating permit:

(i) any standard, rule, or other requirement, including any requirement contained in a consent decree, or judicial or administrative order entered into or issued by the department, that is not contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(ii) any term, condition or other requirement contained in any air quality preconstruction permit issued by the department under subchapters 9, 11, 17, and 18 of this chapter that is not federally enforceable;

(b) "Non-federally enforceable requirement" does not include any Montana ambient air quality standard contained in subchapter 8 of this chapter.

(25) "Permittee" means the owner or operator of any source subject to the permitting requirements of this subchapter, as provided in ARM 16.8.2004, that holds a valid air quality operating permit or has submitted a timely and complete permit application for issuance, renewal, amendment, or modification pursuant to this subchapter.

(26) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical

and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation is federally enforceable. As used in this subchapter, this definition does not alter the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or rules promulgated thereunder.

(27) "Proposed air quality operating permit" or "proposed permit" means the version of an air quality operating permit that the department proposes to issue and forwards to the administrator for review in compliance with ARM 16.8.2025. This includes any final permit which has been appealed to the board of environmental review, if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with ARM 16.8.2025.

(28) "Regulated air pollutant" means the following:

(a) nitrogen oxides or any volatile organic compounds;

(b) any pollutant for which a national ambient air quality standard has been promulgated;

(c) any pollutant that is subject to any standard promulgated under sec. 7411 of the FCAA;

(d) any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) any pollutant subject to a standard or other requirement established or promulgated under sec. 7412 of the FCAA, including but not limited to the following:

(i) any pollutant subject to requirements under sec. 7412(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to sec. 7412(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to sec. 7412(e) of the FCAA; and

(ii) any pollutant for which the requirements of sec. 7412(g)(2) of the FCAA have been met, but only with respect to the individual source subject to the sec. 7412(g)(2) requirement.

(29) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for

or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the department.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(c) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the environmental protection agency).

(d) For affected sources: the designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder are concerned, and the designated representative for any other purposes under this subchapter.

(30) "Sec. 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "Source requiring an air quality operating permit" means any source subject to the permitting requirements of this subchapter, as provided in ARM 16.8.2004.

(32) "State" means any non-federal air quality permitting authority, including any local agency, interstate association, or statewide program. Where such meaning is clear from the context, "state" shall have its conventional meaning.

(33) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under sec. 7412(b) of the FCAA. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2003 INCORPORATIONS BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1993, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted a section of the United States Code (USC) by reference, the reference in the board rule shall refer to the section of the USC as found in the 1988 edition and Supplement II (1990).

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) the standard industrial classification manual, 1987, executive office of the president, office of management and budget, (US government printing office stock number 1987 O-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy;

(b) 40 CFR 70.3, which sets forth those sources and source categories designated by the administrator as requiring an operating permit pursuant to Title V of the FCAA;

(c) 42 USC 7429(g), which defines solid waste incineration unit for the purposes of Title V of the FCAA;

(d) 42 USC 7429(e), which describes those solid waste incineration units that are required to obtain operating permits under Title V of the FCAA;

(e) 40 CFR Part 72, which describes the operating permit requirements for acid rain sources subject to Title IV of the FCAA;

(f) 40 CFR Part 75, which describes the continuous emission monitoring requirements for acid rain sources subject to Title IV of the FCAA; and

(g) 40 CFR Part 76, which describes the nitrogen oxides emission reduction requirements for acid rain sources subject to Title IV of the FCAA.

(h) A copy of the above materials is available for public inspection and copying at the Air Quality Division, Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the 10 EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, US Government Printing Office, Washington DC 20402. The standard industrial classification manual (1987) (Order No. PB 87-100012) may also be obtained from the US Department of Commerce, National Technical Information Service, 5285 Port Royal

Road, Springfield, Virginia 22161. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1994 MAR p. 2828, Eff. 10/28/94; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2004 AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY (1) The requirements of this subchapter apply to the following sources:

(a) any major source, as defined in this subchapter;

(b) any source, including an area source, subject to a standard, limitation, or other requirement under sec. 7411 of the FCAA;

(c) any source, including an area source, subject to a standard or other requirement under sec. 7412 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under sec. 7412(r) of the FCAA;

(d) any affected source;

(e) any source required to obtain a permit under sec. 7429(e) of the FCAA;

(f) any source in a source category designated by the administrator as requiring an operating permit pursuant to 40 CFR 70.3; and

(g) any source required by the FCAA to obtain a Title V operating permit.

(2) The following source categories are exempted from the obligation to obtain an air quality operating permit:

(a) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR Part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(b) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR Part 61, subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), sec. 61.145, (Standard for Demolition and Renovation).

(c) All sources listed in (1) above that are not major or affected sources, or that are solid waste incineration units as defined in sec. 7429(g) of the FCAA that are not required to obtain a permit pursuant to sec. 7429(e).

(3) The department may exempt a source listed in (1) above from the requirement to obtain an air quality operating permit by establishing federally enforceable limitations which limit that source's potential to emit, such that the source is no longer a major stationary source, as defined by ARM 16.8.2002(23).

(a) In applying for an exemption under this section the owner or operator of the source shall certify to the department that the source's potential to emit, when subject to the feder-

ally enforceable limitations, does not require the source to obtain an air quality operating permit. Such certification shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to demonstrate to the department that the source is not required to obtain a permit under (1), above.

(b) Any source that obtains a federally enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (3)(a), above.

(c) Federally enforceable limitations that limit a source's potential to emit may be established through conditions contained in an air quality preconstruction permit, or through a judicial order or an administrative order issued by the department or the board, that has been adopted into the Montana state implementation plan.

(d) In order to exempt a source from the requirement to obtain an air quality operating permit, the department may, at a source's request, issue an air quality preconstruction permit to establish federally enforceable permit terms, solely to limit a source's potential to emit, even if there is no associated construction at the source, the source has an air quality preconstruction permit or the source otherwise is not required to obtain a preconstruction permit.

(4) Any source exempt from the requirement to obtain an air quality operating permit may nevertheless opt to apply for a permit under this subchapter.

(5) The air quality operating permit shall include all applicable requirements for all emissions units at a source required to obtain a permit. Non-federally enforceable requirements and requirements for insignificant emission units shall be included, but shall not be subject to the other requirements of this subchapter except as required in ARM 16.8.2009(3).

(6) Fugitive emissions from a source required to obtain an air quality operating permit shall be included in the permit application and permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(7) The department shall, upon written request of any person, make an informal determination as to whether a particular source, which that person operates or proposes to operate, is subject to the requirements of this subchapter. The request must contain such information as is believed sufficient for the department to make the requested determination. The department may request any additional information that is necessary for informally determining the applicability of this subchapter.

The department shall supply any informal applicability determination to the requestor in writing. The department shall notify any person that has received an informal determination of applicability 15 days prior to withdrawal of or any change in that informal determination. An informal determination under this section (7) may not be appealed to the board, and does not impair or otherwise limit the opportunity to seek a declaratory ruling under Title 2, chapter 4, part 5, MCA. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2005 REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) For each source required to obtain an air quality operating permit, the owner or operator shall submit a timely and complete air quality operating permit or renewal application in accordance with this rule.

(2) To be considered timely for the purposes of this rule, a source that is required to obtain a permit pursuant to this subchapter must file its application with the department as follows:

(a) One-third of all sources in existence on the date this rule is adopted by the board, or sources that have obtained air quality preconstruction permits prior to the adoption date of this rule but commence operation after such adoption date, shall submit an air quality operating permit application no later than one year after the adoption date or within 30 days of the date the permit program is approved by the administrator (including partial or interim approval), whichever is later. The remainder of these sources shall submit a permit application no later than one year after the date the permit program is approved by the administrator (including partial or interim approval). Within 30 days after the adoption date of this rule, the department shall notify the 1/3 of the above-described sources that are required to submit applications for permits under this subchapter by the first deadline set forth above. The method used by the department to determine which of the above-described sources are included in the initial 1/3 must be fair and equitable and shall to the greatest extent practicable provide for a representative sample of air quality operating permit sources in terms of source size and type.

(b) A source applying for an air quality operating permit for the first time due to the applicability of newly promulgated regulations shall submit a permit application within 12 months after the source becomes subject to the permit program.

(c)(i) Sources required to obtain an air quality operating permit or permit revision that are also required to obtain an air quality preconstruction permit under this chapter shall submit an application for an air quality operating permit or permit revision concurrent with the submittal of the air quali-

ty preconstruction permit application.

(ii) The processing of the air quality preconstruction and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each application for an air quality operating permit, permit renewal, or permit revision and the associated preconstruction permit application will be processed independently of any other pending application under this chapter, including sources with pending air quality operation permit applications who submit an application for a new or altered air quality preconstruction permit during the initial transition period. Submittal of new air quality permit applications shall not impede the issuance of any pending air quality permit application.

(iii) During the initial transition period, sources that receive final air quality preconstruction permits prior to their submittal of an operating permit application shall be required to address any changes to their facility in the operating permit application. The operating permit application shall be submitted per the schedule prescribed in (2)(a) above.

(d) For renewal, a source shall submit a complete air quality operating permit application to the department not later than six months prior to the expiration of its existing permit, unless otherwise specified in that permit. If necessary to ensure that the terms of the existing permit will not lapse before renewal, the department may specify in writing to the permitted source a longer time period for submission of the renewal application. Such written notification must be provided at least one year before the renewal application due date established in the existing permit. In no case shall this extended time period or the time period established in the existing permit be greater than 18 months.

(e) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(3) To be deemed complete for the purposes of this rule, a source must file its application for an air quality operating permit, or permit revision with the department as follows:

(a) An air quality operating permit application must provide all information required pursuant to this rule and ARM 16.8.2006. An application for permit revision need supply such information only if it is related to the proposed change, and an application for renewal need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. Information submitted pursuant to this rule and ARM 16.8.2006 must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. If the applicant provides sufficient information to satisfy the requirements of the ap-

plication completeness checklist then the application shall be deemed to be administratively complete for the purposes of applying the application shield provided for in ARM 16.8.2015, and the department shall notify the applicant of such administrative completeness. Use of the completeness checklist is not intended to replace a substantive completeness review and determination pursuant to this subchapter, but is only intended to facilitate the application of the application shield. A responsible official shall certify the submitted information consistent with ARM 16.8.2007. Except as otherwise provided in ARM 16.8.2014(6) and (7), unless the department determines that an air quality operating application is not substantively complete within 60 days of receipt of the application, such application shall be deemed to be substantively complete.

(b) If, while processing an application for an air quality operating permit or permit revision that has been determined or deemed to be substantively complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response (not less than 15 days).

(c) The source's ability to operate without an air quality operating permit, as set forth in ARM 16.8.2015(2), shall be in effect from the date the application is determined or deemed to be administratively complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(d) Sources that would qualify for a general air quality operating permit must provide written notification to the department of their intent to operate under the terms of the general permit, or must apply for an air quality operating permit consistent with (1), above. The terms of the general permit adopted pursuant to ARM 16.8.2016 may provide for applications which deviate from the requirements of (1) above, and ARM 16.8.2006, provided that such requirements are consistent with Title V of the FCAA, and include all information necessary for the department to determine qualification for, and assure compliance with, the general permit.

(e) An application for an air quality operating permit revision that is submitted as a minor modification shall meet the requirements of ARM 16.8.2006, and shall include the following:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the source's suggested draft permit;

(iii) certification by a responsible official, consistent with ARM 16.8.2007, that the proposed permit modification meets the criteria for use of minor modification procedures and a re-

quest that such procedures be used; and

(iv) completed forms for the department to use to notify the administrator and affected states as required under ARM 16.8.2025.

(f) An application for an air quality operating permit revision that is submitted as a group processing of minor modifications shall meet the requirements of ARM 16.8.2006, and shall include the following:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the source's suggested draft permit;

(iii) certification by a responsible official, consistent with ARM 16.8.2007, that the proposed permit modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(iv) a list of the source's other pending permit modification applications awaiting group processing, and a determination of whether the requested modification, when aggregated with these other applications, equals or exceeds the threshold set under ARM 16.8.2020(7)(b);

(v) certification, consistent with ARM 16.8.2007, that the source has notified the administrator of the proposed modification. Such notification need only contain a brief description of the requested modification; and

(vi) completed forms for the department to use to notify the administrator and affected states as required under ARM 16.8.2025.

(4) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for an air quality operating permit or permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a substantively complete application, but prior to release of a draft permit.

(5) Where an applicant has submitted information to the department under a judicial determination of confidentiality, the source must submit a copy of such information directly to the administrator. This requirement does not preclude or limit in any manner the right of the applicant to assert to the administrator the confidential status and nature of the information. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2006 INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1) For each emissions unit at a source required to obtain an air quality operating permit the applicant shall include in its application for a permit, permit renewal or permit revision the information described in this rule.

(2) The required information shall be submitted to the department and the administrator on a standard air quality permit application form or in a standard permit application format to be approved by the department. To the extent possible all required information shall also be submitted to the department in electronic form, in a word processing format convertible to or compatible with department software.

(3) Insignificant emissions units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emissions units and emissions from insignificant emission units must be included in emission inventories and are subject to assessment of permit fees. Emission inventories are to be calculated or estimated using accepted engineering methods which may include, but are not limited to, use of appropriate emission factors, material balance calculations, or best engineering judgement or process knowledge. Insignificant emission units may be listed by category.

(4) An application for an air quality operating permit or permit revision may not omit information that is necessary to

determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate the fee amount required under subchapter 19 of this chapter.

(5) The applicant shall, at a minimum, provide the information specified below:

(a) identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(b) a description of the source's processes and products (by standard industrial classification code) including any associated with each reasonably anticipated operating scenario identified by the source pursuant to ARM 16.8.2013(1);

(c) an emission inventory of all emissions of pollutants for which the source is major, and an emission inventory of all emissions of regulated air pollutants. An air quality operating permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit. The applicant shall provide additional information related to such emissions of air pollutants as necessary to verify which requirements are applicable to the source, and other information that may be necessary to determine any permit fees owed under subchapter 19 of this chapter;

(d) identification and description of all points of emissions described in (c) above, in sufficient detail to establish both the basis for fees and the applicability of any applicable requirement;

(e) emissions rates in tons per year, and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(f) information regarding fuels, fuel use, raw materials, production rates, and operating schedules, to the extent such information is needed to determine or regulate emissions;

(g) identification and description of air pollution control equipment and compliance monitoring devices or activities;

(h) limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source;

(i) other information related to emissions as required by any applicable requirement (including information related to stack height limitations developed pursuant to sec. 7423 of the FCAA) or this chapter (including the location of emission units, flow rate, building dimensions, and stack parameters such as height, diameter, and temperature);

(j) results of all dispersion modeling required by the department, except that this subsection may not be construed as a basis for requiring additional dispersion modeling to be done by the source;

(k) all calculations on which the information in (a)-(j)

above is based;

(l) citation and description of all applicable requirements;

(m) description of or reference to any applicable test method for determining compliance with each applicable requirement;

(n) other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or of this chapter or to determine the applicability of such requirements;

(o) an explanation of any proposed exemptions from otherwise applicable requirements;

(p) additional information as determined to be necessary by the department to define reasonably anticipated alternative operating scenarios identified by the source pursuant to ARM 16.8.2013(1) or to define permit terms and conditions implementing ARM 16.8.2013(3) or 16.8.2018(3) and (4);

(q) a certification of compliance with all applicable requirements by a responsible official consistent with ARM 16.8.2007 and sec. 7414(a)(3) of the FCAA;

(r) a statement of the methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(s) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(t) a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(6) In addition to the information required in (5) above, the applicant shall submit a compliance plan and schedule that contains a description of the compliance status of the source with respect to all applicable requirements, which shall include the following:

(a) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b) for applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed plan or schedule is required by the applicable requirement or the department;

(c) for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements and a schedule of compliance. The compliance schedule shall include

a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or judicial, board or department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(d) a schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

(7) The compliance plan content requirements specified in (6) above, shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as otherwise provided in regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(8) As applicable, any application submitted pursuant to this subchapter shall use the nationally-standardized forms for the acid rain portions of applications and compliance plans, consistent with regulations promulgated under Title IV of the FCAA.

(9) As part of any application for a permit or general permit submitted pursuant to this subchapter, the applicant shall provide to the department a copy of all general safety rules, policies or requirements that are applicable to a department inspector during an air quality inspection.

(10) Upon request, the department shall provide to the applicant a completeness checklist that contains the minimum information required under this rule, ARM 16.8.2005 and 16.8.2007 for an application under this subchapter to be determined to be administratively complete for the purpose of application of the application shield.

(11) An applicant is not required to submit information that has been previously submitted to the department, but must reference such previous submittal. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2007 CERTIFICATION OF TRUTH, ACCURACY, AND COMPLETENESS (1) Any application form, report, or compliance certification submitted pursuant to this subchapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2008 GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) Each air quality operating permit shall contain the following general information:

(a) name and mailing address of permittee;

(b) type of operation;

(c) permit milestone dates including, the date the permit application was received, the date the permit application was deemed complete, the date the draft permit was issued, the date the proposed permit was issued, the date the final permit was issued and the permit expiration date;

(d) permit number; and

(e) name of the designated representative.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) The permittee must comply with all conditions of the permit. Any noncompliance with the terms or conditions of a permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, operating permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under this subchapter. Permits may only be terminated or revoked and reissued for continuing and substantial violations.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. If appropriate, this factor may be considered as a mitigating factor in assessing a penalty for noncompliance with an applicable requirement if the source demonstrates both that the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations, and that such health, safety, or environmental impacts were unforeseeable and could not have otherwise been avoided.

(c) The permit may be modified, revoked and reissued, reopened, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the department, within a reasonable time set by the department (not to be less than 15 days), any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance

with the permit. Upon request, the permittee shall also furnish to the department copies of those records that are required to be kept pursuant to the terms of the permit. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the department, as provided in 75-2-105, MCA.

(f) A permittee must pay application and operating permit fees as a condition of the permit, pursuant to subchapter 19.

(g) Permits under this subchapter will be issued for a fixed term of five years.

(h) If a timely and complete permit application for permit renewal has been submitted, and consistent with the operation of the application shield pursuant to ARM 16.8.2015, the existing permit and all terms and conditions contained therein will not expire until the permit renewal has been issued or denied.

(i) The administrative appeal or subsequent judicial review of the issuance by the department of an initial permit under this subchapter shall not impair in any manner the underlying applicability of all applicable requirements, and such requirements continue to apply to the source as if a final permit decision had not been reached by the department.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, reissuance, or termination of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for hearing postpones the effective date of the department's decision until the board issues a final decision. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) The denial by the department of an application for permit issuance, renewal or revision under this subchapter which is the result of an objection by the administrator may not be appealed to the board. This shall not impair any separate right an applicant or the department may have under state or federal law to challenge an objection by the administrator.

(3) The following additional standard terms and conditions are applicable to each air quality operating permit issued to an affected source:

(a) Emissions shall not be permitted in excess of any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(b) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(c) No limit shall be placed in the permit on the number of

allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(d) Any allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(4) Each general air quality operating permit shall contain provisions regarding the following standard terms and conditions:

(a) Compliance shall be required with all requirements applicable to other air quality operating permits.

(b) The criteria by which sources may qualify for the general permit shall be set forth.

(5) Each air quality operating permit issued to temporary sources shall contain provisions regarding the following standard terms and conditions:

(a) Conditions that assure compliance with all applicable requirements at all authorized locations.

(b) Requirements that the owner or operator notify the department at least 10 days in advance of each change in location.

(c) Conditions that assure compliance with all other provisions of this chapter. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2009 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO EMISSION LIMITATIONS AND STANDARDS, AND OTHER REQUIREMENTS (1) Each air quality operating permit issued pursuant to this subchapter shall contain the following:

(a) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(b) a specific description with appropriate references of the origin of, and authority for, each term or condition contained in the permit, including a description of any differences in form as compared to the applicable requirement upon which the term or condition is based; and

(c) all relevant terms and conditions applicable to a source, including those terms and conditions that are not applicable requirements, which shall be clearly designated as such.

(2) Every requirement contained in an air quality operating permit must be based upon the following:

(a) the FCAA and rules promulgated thereunder, including the Montana state implementation plan and other applicable requirements;

(b) rules, requirements, administrative orders, or permits that have been promulgated, adopted, or issued pursuant to Title 75, chapter 2, MCA; or

(c) requirements contained in a judicial order or consent

decree entered in response to a violation of any rule, requirement, administrative order, or permit that has been promulgated, adopted, or issued pursuant to Title 75, chapter 2, MCA.

(3) In the air quality operating permit the department shall specifically designate as being non-federally enforceable under the FCAA any terms or conditions included in the permit that are not required under the FCAA or any applicable requirements. Those terms and conditions which the department specifically designates as being non-federally enforceable requirements are not subject to the following rules contained in this subchapter:

(a) ARM 16.8.2008, except for secs. (2) and (5). However, while noncompliance with a permit term or condition that is a non-federally enforceable requirement may result in an enforcement action by the department, it shall not result in permit revocation and reissuance, termination, or denial of a permit renewal application under this subchapter;

(b) ARM 16.8.2009, except for (1)-(3) and (7);

(c) ARM 16.8.2010, except for (1)(a) and (3)(a), and (2) and (4);

(d) ARM 16.8.2011, except for (3) and (4);

(e) ARM 16.8.2013;

(f) ARM 16.8.2014, except for (1)(a), (b) and (d), and (6)-(9), (12) and (13);

(g) ARM 16.8.2016, 16.8.2018-16.8.2023, and 16.8.2025.

(4) For those sources that are required to develop and register a risk management plan pursuant to sec. 7412(r) of the FCAA, the air quality operating permit will only require that the permittee comply with the requirement to register such a plan. The content of the plan will not be incorporated into the permit as an applicable requirement.

(5) For affected sources, the permit shall state that where an applicable requirement is more stringent than an applicable requirement from regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable.

(6) If the Montana state implementation plan allows for the determination of an alternative emission limit that is equivalent to the limit contained in the plan, and during the air quality operating permit issuance, renewal, or significant modification process the department elects to make such a determination, any permit containing such alternative equivalent limit shall contain provisions to ensure that the limit is demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(7) The requirement under this subchapter to obtain an air quality operating permit may not be construed as providing a basis for establishing new emission limitations beyond those contained in the underlying applicable requirements to be incor-

porated into the permit. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2010 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) Each air quality operating permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any required procedures and methods promulgated pursuant to secs. 7661c(b) or 7414(a)(3) of the FCAA;

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the air quality operating permit, as reported pursuant to (3), below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this section; and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Each air quality operating permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

(iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions at the time of sampling or measurement.

(b) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. All monitoring data, support information, and required reports and summaries may be maintained in a computerized form at the plant site if the information is made available to department personnel upon request, which may be for

either hard copies or computerized format. Strip-charts must be retained in their original form at the plant site and shall be made available to department personnel upon request.

(3) Each air quality operating permit shall incorporate the following requirements relating to reporting:

(a) All applicable reporting requirements must be included in the permit.

(b) Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from the permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with ARM 16.8.2007.

(c) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported as part of the routine reporting requirements under (3)(b) above, and if applicable, in accordance with the malfunction reporting requirements under ARM 16.8.705, unless otherwise specified in an applicable requirement.

(4) The requirement to obtain a permit under this subchapter may not be used as the basis for establishing new monitoring, recordkeeping or reporting requirements, except as may be required under (1)(b), above. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2011 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) All air quality operating permits shall contain the provisions required by this rule with respect to compliance.

(2) Consistent with ARM 16.8.2010, all permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain a certification by a responsible official that meets the requirements of ARM 16.8.2007.

(3) Each permit shall contain inspection and entry requirements which require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department, the administrator or an authorized representative (including an authorized contractor acting as a representative of the department or the administrator) to perform the following:

(a) enter the premises where a source required to obtain a permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) inspect at reasonable times any facilities, emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) as authorized by the Montana Clean Air Act and rules promulgated thereunder, sample or monitor at reasonable times any substances or parameters at any location for the purpose of assuring compliance with the permit or applicable requirements.

(4) Inspections pursuant to (3) above, shall be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and source-specific facility workplace safety rules or requirements. The source shall inform the inspector of all applicable workplace safety rules or requirements at the time of the inspection. This section shall not limit in any manner the department's statutory right of entry and inspection as provided for in 75-2-403, MCA.

(5) Each permit shall contain a schedule of compliance consistent with ARM 16.8.2006(6).

(6) Consistent with ARM 16.8.2006(6), the permit shall require progress reports to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(7) Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include the following:

(a) A requirement that compliance certifications be submitted at least once per year or more frequently if otherwise specified in an applicable requirement or by the department. Notwithstanding any applicable requirement, the department may specify that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms and conditions.

(b) In accordance with ARM 16.8.2010, a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices that are contained in applicable requirements.

(c) A requirement that the compliance certification include the following:

(i) the identification of each term or condition of the

permit that is the basis of the certification;

(ii) the compliance status as shown by monitoring or other information required by the permit or otherwise reasonably available to the source;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with ARM 16.8.2010; and

(v) such other facts as the department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the department.

(e) Such additional requirements as may be specified pursuant to secs. 7414(a)(3) and 7661c(b) of the FCAA. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2012 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE PERMIT SHIELD AND EMERGENCIES (1) Except as provided in this section, the department shall include in an air quality operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements and any non-federally enforceable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements and non-federally enforceable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An air quality operating permit that does not expressly state that a permit shield extends to specific applicable requirements and to non-federally enforceable requirements will be presumed not to provide such a shield for those requirements.

(3) The permit shield described in (1) above shall remain in effect during the appeal of any permit action (renewal, revision, reopening, revocation or reissuance) to the board until such time as the board renders its final decision.

(4) Nothing in (1), (2) or (3) above, or in any air quality operating permit shall alter or affect the following:

(a) the provisions of sec. 7603 of the FCAA, including the authority of the administrator under that section;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with sec. 7651g(a) of the FCAA;

(d) the ability of the administrator to obtain information from a source pursuant to sec. 7414 of the FCAA;

(e) the ability of the department to obtain information from a source pursuant to the Montana Clean Air Act, Title 75, chapter 2, MCA;

(f) the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA; or

(g) the ability of the department to establish or revise requirements for the use of reasonably available control technology (RACT) as defined in this chapter. However, if the inclusion of a RACT into the permit pursuant to this subchapter is appealed to the board, the permit shield as it applies to the source's existing permit shall remain in effect until such time as the board has rendered its final decision.

(5) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the conditions of (6) and (7) below are met.

(6) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirements of ARM 16.8.2010(3)(c). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(7) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(8) The provisions in (5)-(7) above, are in addition to any emergency, malfunction or upset provision contained in any applicable requirement. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2013 REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO OPERATIONAL FLEXIBILITY (1) If requested by the applicant, the department shall issue an air quality operating permit that contains terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms

and conditions:

(a) shall require the source, contemporaneously with making a change from one reasonably anticipated operating scenario to another, to record in a log at the permitted facility a record of the reasonably anticipated scenario under which it is operating;

(b) shall extend the permit shield described in ARM 16.8.2012 above to all terms and conditions under each such reasonably anticipated operating scenario;

(c) shall require the source to provide contemporaneous written notification when the source shifts from one specified reasonably anticipated operating scenario to another such operating scenario; and

(d) shall ensure that the terms and conditions of each such reasonably anticipated operating scenario meet all applicable requirements and the requirements of this subchapter.

(2) A change in operating conditions at a source that does not violate an applicable requirement does not require the use of a reasonably anticipated operating scenario.

(3) If requested by the applicant, the department shall issue an air quality operating permit which contains terms and conditions for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases without case-by-case review and approval. Emissions trading or averaging may occur subject to the terms and conditions in the permit without being included in a reasonably anticipated operating scenario. Such terms and conditions:

(a) shall include all terms required under ARM 16.8.2008 through 16.8.2011 and this rule to determine compliance;

(b) shall extend the permit shield described in ARM 16.8.2012 to all terms and conditions that allow such increases and decreases in emissions;

(c) shall provide for the written notification required in ARM 16.8.2018(1)(e), which will state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(d) shall meet all applicable requirements and requirements of this chapter. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2014 AIR QUALITY OPERATING PERMIT ISSUANCE, RENEWAL, REOPENING AND MODIFICATION (1) An air quality operating permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) the department has received a complete application

for a permit, permit revision, or permit renewal (applications for permit renewal or revision need only address those portions of the source that have or are proposed to be changed per the requirements of ARM 16.8.2005(3)(a));

(b) the department has complied with the requirements for public participation under ARM 16.8.2024;

(c) the department has complied with the requirements for notifying and responding to affected states under ARM 16.8.2025;

(d) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(e) the administrator has received a copy of the proposed permit, all necessary supporting documentation, and any notices required under ARM 16.8.2025, and has not objected to issuance of the permit under 16.8.2025 within 45 days of receipt of the proposed permit and all necessary supporting documentation; and

(f) if the administrator objects to the issuance of a permit, the department shall, within seven days of receipt of the administrator's objection, send the permit applicant a copy of the objection and any statement received from the administrator.

(2) Except as provided under the initial transition plan, (3) below, or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the department shall take final action on each air quality operating permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application.

(3) The department shall take final action on at least one-third of all air quality operating permit applications received during the initial transition period annually for a period of three years following approval of the permit program by the administrator.

(4) The department shall take final action on a complete air quality operating permit application containing an early reduction demonstration that has been approved by the administrator under sec. 7412(i)(5) of the FCAA within nine months of receiving a complete application.

(5) The department shall ensure priority is given to taking action on air quality preconstruction permit applications for construction or modification submitted pursuant to subchapters 9, 11, 17, and 18 of this chapter.

(6) Upon filing, the department shall promptly make a determination as to whether the application is administratively complete, as provided for in ARM 16.8.2005(3). The department shall provide notice to the applicant of whether the air quality operating permit application is substantively complete. Unless the department requests additional information or other-

wise notifies the applicant of substantive incompleteness within 60 days of receipt of a permit application, the application shall be deemed complete. For modifications processed through the minor modification procedures contained in ARM 16.8.2020, the department does not have to provide a completeness determination.

(7) Within 30 days of receipt of a notice of substantive incompleteness, the source shall submit a response to the department supplying the requested information. The department may extend this time period upon request. If a response is not received within this time period the application shall be considered withdrawn, and may be resubmitted. The department shall notify the applicant in writing within 60 days thereafter if the application is still substantively incomplete. This, and any subsequent incomplete notice shall follow the same form and requirements as the original incomplete notice.

(8) The department shall provide a statement that sets forth the legal and factual basis for the draft air quality operating permit conditions (including references to the applicable statutory or regulatory provisions). The department shall send this statement to the administrator and to any other person who requests it.

(9) The submittal of a complete air quality operating permit application does not affect a requirement that a source obtain an air quality preconstruction permit prior to commencement of construction under subchapters 9, 11, 17, or 18 of this chapter.

(10) An air quality operating permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA.

(11) The renewal of an air quality operating permit is subject to the same procedural requirements that apply to permit issuance, including those for applications, content, public participation, and affected state and administrator review.

(12) Expiration of an air quality operating permit terminates the source's right to operate unless a timely and administratively complete permit renewal application has been submitted consistent with ARM 16.8.2015 and 16.8.2005(2)(d). If a timely and administratively complete application has been submitted all terms and conditions of the permit, including the application shield, remain in effect after the permit expires.

(13) The department shall provide a minimum of 30 days advance written notice to the holder of an air quality operating permit of the department's intent to revoke and reissue the permit or deny the permit renewal application. The notice of intent may not be appealed to the board. The department's final decision to revoke and reissue or deny renewal becomes effective and may be appealed to the board as provided for in ARM 16.8.2008(2)(j). The permit shield described in ARM

16.8.2012(1) shall remain in effect during any appeal of the department's decision to deny renewal or revoke and reissue to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2015 OPERATION WITHOUT AN AIR QUALITY OPERATING PERMIT AND APPLICATION SHIELD (1) Except as provided in (2) below, ARM 16.8.2018(3), and 16.8.2020(6) and (10), no source required to obtain an air quality operating permit may operate after the time that it is required to submit a timely and complete application for a permit, except in compliance with a permit issued under this subchapter.

(2) If a source required to obtain an air quality operating permit submits a timely and complete application for permit issuance or renewal, the source's failure to have a permit is not a violation of this subchapter until the department takes final action on the permit application, except as otherwise noted in this subchapter. This protection becomes effective upon determination by the department that a timely application is administratively complete, as provided for in ARM 16.8.2005(3), and shall cease to apply if, subsequent to the substantive completeness determination made pursuant to ARM 16.8.2014(6), and as required by ARM 16.8.2005(3), the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being necessary to process the permit application. If the department's final action on any permit application under this subchapter is appealed to the board, the application shield, if in effect, shall remain in effect until such time as the board renders its final decision. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2016 GENERAL AIR QUALITY OPERATING PERMITS (1) The department may provide for a general air quality operating permit covering a source category with numerous similar sources, if it concludes that the category is appropriate for permitting on a generic basis.

(2) The department may provide for a general permit based upon its own initiative or the application of a source within the source category. The department shall provide a notice and opportunity for public participation, consistent with ARM 16.8.2024. Such procedures may be combined with the rulemaking process before the board required for the adoption and incorporation by reference of a general permit.

(3) A general permit may be used to establish terms and conditions to implement applicable requirements for a source category or for new requirements that apply to sources with existing general permits, or to establish federally enforceable caps on emissions from sources in a specific category.

(4) A general permit may be appropriate under the following conditions:

(a) there are several permittees, permit applicants, or potential permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

(b) the permittees, permit applicants, or potential permit applicants emit the same types of regulated air pollutants;

(c) the operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

(d) the operations, emissions, activities or facilities are subject to the same or similar monitoring requirements.

(5) A general air quality operating permit shall include those requirements set forth in ARM 16.8.2008(4).

(6) After a general permit has been proposed by the department and formally adopted by the board, a source that intends to operate under the terms of the general permit must provide written notice to the department before it may qualify for the general permit, as required by ARM 16.8.2005(3)(d). Such notification shall identify the source, provide information sufficient to demonstrate that the source falls within the source category covered by the general permit and is capable of operating in compliance with the terms and conditions of the general permit, and include any additional information that may be specified in the general permit.

(7) Without repeating the public participation procedures required under ARM 16.8.2024, the department may review a source's written notification, and based upon the information submitted, confirm or deny that the source appears to both qualify for the general permit and be capable of operating in compliance with the terms and conditions of the general permit. The department may request such additional information from the source as may be necessary to make these findings. Such action is not a final permit action for purposes of board review.

(8) The department shall act to make the necessary findings in (7) above, within 90 days of receipt of the notification provided for in (6) above, and shall provide written notice to the source of its findings.

(9) A general permit shall provide that any source whose coverage under the general permit has been confirmed by the department pursuant to (7) above, shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source

does not qualify for the conditions and terms of the general permit. If the source is later determined not to qualify for the conditions and terms of the general permit, the source may be subject to enforcement action for operation without an air quality operating permit.

(10) The renewal of a general permit is subject to the same procedural requirements, including public participation, that apply to the initial issuance of general permits.

(11) General air quality operating permits may not be authorized for affected sources under the acid rain program, unless otherwise provided in regulations promulgated under Title IV of the FCAA. (History: Sec. 75-2-217, 75-2-218, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2017 TEMPORARY AIR QUALITY OPERATING PERMITS

(1) The department may issue an air quality operating permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source may be permitted as a temporary source. Permits for temporary sources shall include those requirements set forth in ARM 16.8.2008(5). (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2018 ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXIBILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS (1) A source holding an air quality operating permit is authorized to make changes within a permitted facility as described in (3) and (4) below, providing the following conditions are met:

(a) the proposed changes do not require the source or stack to obtain an air quality preconstruction permit under subchapter 11 of this chapter;

(b) the proposed changes are not modifications under Title I of the FCAA, or as defined in subchapters 9, 17 or 18 of this chapter;

(c) the emissions resulting from the proposed changes do not exceed the emissions allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(d) the proposed changes do not alter permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;

(e) the facility provides the administrator and the department with written notification at least 7 days prior to making the proposed changes.

(2) The source and department shall attach each notice provided pursuant to (1)(e), above, to their respective copies

of the appropriate air quality operating permit.

(3) Pursuant to the conditions in (1) and (2) above, a source holding an air quality operating permit is authorized to make sec. 502(b)(10) changes, as defined in this subchapter, without a permit revision. For each such change, the written notification required under (1)(e) above, shall include a description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(4) Pursuant to the conditions in (1) and (2) above, and upon the request of the permit applicant, the department shall issue an air quality operating permit that contains terms and conditions, including all terms required under ARM 16.8.2008 through 16.8.2011 and 16.8.2013 to determine compliance, allowing for the trading of emissions increases and decreases at the source solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, providing the following conditions are met:

(a) the applicant must include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

(b) the emissions trades may not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades;

(c) the permit must require compliance with all applicable requirements;

(d) emission trading may only be done within a pollutant, that is, emission decreases may only be traded for emission increases of the same pollutant; and

(e) the written notification required under (1)(e) above, must state when the change will occur, and describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(5) A source holding an air quality operating permit may make a change not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the following conditions are met:

(a) each proposed change does not weaken the enforceability of any existing permit condition;

(b) the department has not objected to such change;

(c) each proposed change meets all applicable requirements and does not violate any existing permit term or condition; and

(d) the source provides contemporaneous written notice to the department and the administrator of each change that is

above the level for insignificant emission units as defined in ARM 16.8.2002(22) and 16.8.2006(3), and the written notice describes each such change, including the date of the change, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(6) The permit shield authorized by ARM 16.8.2012 shall not apply to changes made pursuant to (3) and (5) above, but is applicable to terms and conditions that allow for increases and decreases in emissions pursuant to (4) above.

(7) Notwithstanding any provisions of this rule, the following changes must be submitted as an air quality operating permit revision:

(a) any change that increases emissions above those allowed in the air quality operating permit;

(b) any change that increases emissions above those allowed in the air quality preconstruction permit;

(c) any change that is a modification as defined in subchapters 9, 17 or 18 of this chapter;

(d) any change that is a modification or reconstruction under secs. 7410, 7411, or 7412 of the FCAA; or

(e) any change subject to the acid rain requirements under Title IV of the FCAA. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2019 ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT AMENDMENTS (1) An administrative permit amendment may be made by the department to an air quality operating permit, consistent with the following:

(a) The department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public or affected states, provided that it designates any such permit revisions as having been made pursuant to this rule.

(b) The department shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) If the administrative permit amendment involves a change in ownership or operational control of a source, the applicant must include in its request to the department a written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee. Such an amendment shall be approved unless the department affirmatively demonstrates why such a change would violate an applicable requirement or jeopardize compliance with the terms and conditions of the operating permit.

(3) Administrative permit amendments for purposes of the acid rain portion of the permit will be governed by regulations promulgated under Title IV of the FCAA.

(4) The permit shield provided for in ARM 16.8.2012 shall extend to administrative permit amendments. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2020 ADDITIONAL REQUIREMENTS FOR MINOR AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) Minor air quality operating permit modification procedures may be used only for those permit modifications that:

(a) do not violate any applicable requirement;

(b) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements or other permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;

(c) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination of ambient impacts for temporary sources, or a visibility or increment analysis;

(d) are not modifications under any provision of Title I of the FCAA;

(e) do not require an air quality preconstruction permit;

(f) are not required by the department to be processed as a significant modification; and

(g) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the FCAA, and an alternative emissions limit approved pursuant to regulations promulgated under sec. 7412(i)(5) of the FCAA.

(2) Notwithstanding (1) and (7), minor air quality operating permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Montana state implementation plan or in applicable requirements promulgated by the administrator.

(3) An application for a minor permit modification under this rule need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

(4) Within 5 working days of receipt of a complete permit

modification application, the department shall meet its obligation under ARM 16.8.2025 to notify the administrator and affected states of the requested permit modification. The department must promptly send any notice required under ARM 16.8.2025 to the administrator.

(5) The department may not issue a final minor air quality operating permit modification until after the administrator's 45-day review period ends, or until the administrator has notified the department that the administrator will not object to issuance of the permit modification, whichever first occurs, although the department can approve the permit modification prior to that time. Within 90 days of the department's receipt of an application under minor modification procedures or 15 days after the end of the administrator's 45-day review period under ARM 16.8.2025, whichever is later, and after the close of any public comment period, the department shall:

(a) issue the permit modification as proposed;

(b) deny the permit modification application;.

(c) determine that the requested permit modification does not meet the minor modification criteria and should be reviewed under the significant modification procedures; or

(d) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by ARM 16.8.2025.

(6) Unless the proposed change requires an air quality preconstruction permit, the source may make the change proposed in its minor modification application immediately after such application is filed with the department. After the source makes the proposed change, and until the department takes any of the actions specified in (5) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions that it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions that it seeks to modify may be enforced against it.

(7) Consistent with the requirements in this section and (8)-(10) below, the department may process groups of a source's applications for certain modifications eligible for minor modification processing. Group processing may be used only for those modifications:

(a) that meet the criteria for minor modification procedures under (1) above; and

(b) that collectively are below 10% of the emissions allowed by the existing air quality operating permit for the emissions unit at which the change is requested, 20% of the applicable definition of major source in ARM 16.8.2002(22), or 5 tons per year, whichever is least.

(8) On a quarterly basis or within five business days of receipt of a permit modification application demonstrating that the aggregate of a source's pending minor permit modification application equals or exceeds the threshold level set under (7) above, whichever is earlier, the department must promptly meet its obligation under ARM 16.8.2025 to notify the administrator and affected states of the requested permit modifications. The department shall send any notice required under ARM 16.8.2025 to the administrator.

(9) The provisions of (5) above, shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in (5)(a)-(d) above, within 180 days of receipt of the application or 15 days after the end of the administrator's 45-day review period under ARM 16.8.2025, whichever is later.

(10) The provisions of (6) above, shall apply to modifications eligible for group processing.

(11) The permit shield under ARM 16.8.2012 will not extend to any minor modifications processed pursuant to this rule.

(12) If the department makes a written determination that a particular modification or type of modification requires public notice, the department shall, consistent with ARM 16.8.2024, provide public notice of a change or changes proposed in a minor permit modification application pursuant to this rule, promptly on the making of the determination, and the department shall provide written notice to the source of the specific reason for such determination. It is the intention of this section that public notice for minor modifications shall not be required as a routine procedure. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2021 ADDITIONAL REQUIREMENTS FOR SIGNIFICANT AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) The modification procedures set forth in (3) below, must be used for any application requesting a significant modification of an air quality operating permit. Significant modifications include the following:

(a) any permit modification that does not qualify as either a minor modification or as an administrative permit amendment;

(b) every significant change in existing permit monitoring terms or conditions;

(c) every relaxation of permit reporting or recordkeeping terms or conditions which limits the department's ability to determine compliance with any applicable rule, consistent with the requirements of the rule; or

(d) any other change determined by the department to be significant.

(2) Nothing herein may be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant.

(3) Significant modifications shall meet all requirements of this chapter, including those for applications, public participation, and review by affected states and the administrator, as they apply to permit issuance and renewal, except that an application for a significant modification permit need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. The department shall conduct this process to complete review of the majority of significant modifications within 9 months after receipt of a complete application.

(4) The permit shield provided for in ARM 16.8.2012 shall extend to significant modifications. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2022 ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT REVOCATION, REOPENING AND REVISION FOR CAUSE

(1) An air quality operating permit may be reopened and revised only under the following circumstances:

(a) Additional applicable requirements under the FCAA become applicable to a major source holding a permit with a remaining term of three or more years. Reopening and revision of the permit shall be completed not later than 18 months after promulgation of the applicable requirement. No reopening is required under this subsection if the effective date of the applicable requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to ARM 16.8.2014(12) or 16.8.2015(2).

(b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator or the department determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(2) Each permit issued under this subchapter shall specify that under the circumstances contained in (1)(a)-(d), above, the permit shall be reopened and revised.

(3) Proceedings to reopen and revise an air quality oper-

ating permit, including the opportunity for appeal and review by the board, shall follow the same procedures as apply to permit issuance, and shall affect only those parts of the permit for which cause exists for reopening and revision under (1) above. Reopening and revision shall be completed as expeditiously as practicable.

(4) The department shall provide a minimum of 90 days advance written notice to the holder of an air quality operating permit of the department's intent to reopen and revise the permit under (1) above. The department may, in the notice of intent, request such information as may be necessary to prepare the permit revision for inclusion in the permit after reopening. The notice of intent to reopen may not be appealed to the board. The department's final decision on reopening and revision becomes effective and may be appealed to the board as provided for in ARM 16.8.2008(2)(j). In an appeal of the department's final decision on reopening, the department shall be required to make a showing of substantial necessity. The permit shield described in ARM 16.8.2012(1) shall remain in effect during any appeal of the department's decision to reopen to the board until such time as the board renders its final decision. Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2023 NOTICE OF TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE BY THE ADMINISTRATOR FOR CAUSE (1) If the administrator notifies the department and the permittee in writing that cause exists to terminate, modify, or revoke and reissue an air quality operating permit pursuant to the circumstances contained in ARM 16.8.2022(1), the department shall, within 90 days after receipt of notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The department may apply to the administrator for an extension of up to an additional 90 days if a new or revised permit application is necessary or the department must require the permittee to submit additional information.

(2) If the administrator objects in writing to the department's proposed determination pursuant to (1) above, the department shall have 90 days from receipt of the objection to resolve the issues raised by the administrator, and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2024 PUBLIC PARTICIPATION (1) Except for permit

changes not requiring revisions under ARM 16.8.2018, administrative permit amendments under ARM 16.8.2019, department review of activities to be conducted pursuant to general permits under ARM 16.8.2016, and minor permit modifications where the department has not made a determination that public notice is required under ARM 16.8.2020(12), all air quality operating permit proceedings, including initial permit issuance, minor permit modifications where the department has made a determination that public notice is required under ARM 16.8.2020(12), significant permit modifications, and renewals, shall provide adequate procedures for public notice, including an opportunity for both public comment and a hearing on the draft permit. These procedures shall include the following:

(a) The department shall give public notice by publication in a newspaper of general circulation in the area where the source is located, to persons on a mailing list developed by the department including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

(b) The notice required under (a) above, shall identify the following:

(i) the affected facility;

(ii) the name and address of the permittee;

(iii) the name and address of the department;

(iv) the activity or activities involved in the permit action;

(v) the emissions change involved in any permit modification;

(vi) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, including those set forth in compliance plans, compliance certification reports and monitoring reports, and all other materials available to the department that are relevant to the permit decision, with the exception of information that has been declared confidential;

(vii) a brief description of the comment and appeal procedures required by this chapter; and

(viii) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

(c) The department shall provide such notice and opportunity for participation by affected states as provided in ARM 16.8.2025.

(d) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(2) The department shall keep a record of both the commenters and the issues raised during the public participation

process so that the administrator may fulfill the obligation under sec. 7661d(b)(2) of the FCAA to determine whether a citizen petition may be granted, and such records shall be available to the public.

(3) All comments received during the public comment period shall be promptly forwarded to the source in order that the source may have an opportunity to respond to these comments. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, 75-2-218, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93.)

16.8.2025 PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES (1) The department shall provide to the administrator a copy of each proposed and each final air quality operating permit, including any permit that has been appealed to the board of environmental review, if the board has directed the department to issue a permit that differs from the proposed permit previously forwarded to the administrator for review in compliance with this section.

(2) An applicant shall provide a copy of each air quality operating permit application and each minor or significant permit modification application (including the compliance plans) directly to the administrator. To the extent practicable, the information required under this subsection shall be provided in computer-readable format compatible with the administrator's national database management system.

(3) The department shall keep for five years such records and submit to the administrator such information as the administrator reasonably requires to ascertain whether the state program complies with the requirements of the FCAA and 40 CFR Part 70.

(4) The department shall give notice of each draft air quality operating permit to any affected state on or before the time that the department provides this notice to the public under ARM 16.8.2024, except to the extent ARM 16.8.2020(4) or (8) requires the timing of the notice to be different. The department shall also give notice to any affected state of any appeal of an operating permit to the board, on or before the date that the department provides this notice to the public.

(5) The department shall, as part of the submittal of the proposed air quality operating permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under ARM 16.8.2020(4) or (8)) notify the administrator and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit submitted by the affected state during the public comment or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements

or the requirements of this subchapter. Those requirements designated as not being federally enforceable may not serve as the basis for such recommendations.

(6) No air quality operating permit for which an application must be transmitted to the administrator under (2) above, shall be issued if the administrator objects in writing to its issuance within 45 days of receipt of the proposed permit and all necessary supporting information. Objections by the administrator shall only be based on the grounds that the permit did not demonstrate or require compliance with applicable requirements or comply with the requirements of this subchapter. Those requirements designated as not being federally enforceable may not serve as the basis for such objections.

(7) Any objection by the administrator under (6) above, shall include a statement of the administrator's reasons for objection and a description of the terms and conditions that the air quality operating permit must include to respond to the objection. The administrator shall provide to the permit applicant a copy of the objection.

(8) The failure of the department to do any of the following shall also constitute grounds for an objection by the administrator:

(a) comply with (1)-(5), above;

(b) submit any information necessary to adequately review the proposed permit; or

(c) process the permit under the procedures approved to meet ARM 16.8.2024, except for those actions by the department that are not subject to ARM 16.8.2024.

(9) If the administrator does not object in writing under (6) above, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection.

(10) Any petition filed with the administrator pursuant to (9) above shall be based only on objections to the air quality operating permit that were raised with reasonable specificity during the public comment period provided for in ARM 16.8.2024, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

(11) If the administrator objects to the air quality operating permit as a result of a petition filed under (9) above, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection. If the department has issued a permit prior to receipt of the administrator's objection under this section, and the administrator modifies, terminates, or revokes and reissues

the permit consistent with the procedures in ARM 16.8.2023, the department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application. The permit shield described in ARM 16.8.2012(1) shall remain in effect until a final permit is issued.

(12) If, after an appeal, the board directs the department to issue an air quality operating permit that differs from the proposed permit previously forwarded to the administrator for review, and the administrator objects to issuance of the permit, the department shall not issue a permit until the administrator's objection has been resolved. Until final resolution, the source will not be in violation of the requirement to submit a timely and complete application. The permit shield described in ARM 16.8.2012(1) shall remain in effect until a final permit is issued. The permit issuance and appeal requirements of ARM 16.8.2008(2)(j) shall apply.

(13) Consistent with (6)-(12) above, the department may not issue an air quality operating permit (including a permit renewal or modification) until the administrator has had an opportunity to review the proposed permit and affected states have had an opportunity to review the draft permit as required under this subchapter. The administrator may waive the opportunity for such review by the administrator and affected states. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1993 MAR p. 2933, Eff. 12/10/93; AMD, 1995 MAR p. 535, Eff. 4/14/95.)

16.8.2026 ACID RAIN--PERMITS REGULATION (1) For the purpose of this rule, the following definitions apply:

(a) "Permitting authority," as used in 40 CFR Part 72, means the Montana department of environmental quality air quality division, except when duties cannot be delegated to the state by the US environmental protection agency, in which case "administrator" means the administrator of the US environmental protection agency.

(b) The terms and associated definitions specified in 40 CFR Part 72 shall apply to this rule, except as specified in (1)(a).

(2) Any source that is subject to the requirements of 40 CFR Part 72 shall comply with all applicable requirements of 40 CFR Parts 72 and 75 in obtaining an operating permit under this subchapter. (History: Sec. 75-2-217, MCA; IMP, Sec. 75-2-217, MCA; NEW, 1995 MAR p. 535, Eff. 4/14/95.)

Chapter 9

AIR AND WATER QUALITY

Sub-Chapter 1

Tax Certification for Pollution Control Equipment

Sub-Chapter 1

Tax Certification for
Pollution Control Equipment

16.9.101 DEFINITIONS For the purpose of this subchapter, the following definitions apply, in addition to the definitions contained in 15-6-135, MCA:

(1) "Apportionment" means the identification of the extent to which multi-purpose property, facilities, machinery, devices or equipment are used for pollution control purposes.

(2) "DHES" means the Montana department of health and environmental sciences.

(3) "DOR" means the Montana department of revenue.

(4) "Substantial compliance" means either full compliance with all applicable rules, laws, orders, or permit conditions, or noncompliance with such requirements, provided that incidents of noncompliance are isolated or casual, do not involve continuous acts or patterns of noncompliance, and do not result in the initiation by DHES of an administrative or judicial enforcement action. For purposes of this definition, issuance by DHES of a citation or a notice of violation, without an accompanying compliance or penalty order, does not constitute the initiation of an enforcement action. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

16.9.102 APPLICATION FOR CERTIFICATION AS AIR OR WATER POLLUTION EQUIPMENT (1) Applications for certification pursuant to this subchapter must be made on forms prescribed by DHES. Application forms must be made available by DOR.

(2) The applicant shall submit an original signed application to DHES with copies to DOR and the county commissioners of the county in which the property is located. Applications must contain the following information:

(a) a detailed description of the air or water pollution equipment and how it functions to control pollution. Design or engineering drawings showing the placement and use of the equipment must be provided;

(b) if the equipment is used for purposes other than pollution control, a description of the extent to which the equipment is or will be used for each purpose;

(c) itemization of capital and operating costs associated with the equipment, with apportionment of costs to multiple purposes, when applicable;

(d) identification of existing or pending air or water quality permits for the equipment, and a description of the applicant's compliance status in regard to rules, laws, orders, and permit conditions applicable to the equipment;

(e) certification that the applicant is in substantial compliance with all rules, laws, orders, and permit conditions applicable to the equipment; and

(f) certification that the information provided in the application is correct and complete.

(3) Within 45 days of receipt of an application, DHES shall determine whether additional information is required to make a certification decision. If DHES determines that additional information is required, DHES shall notify the applicant in writing and specify the date by which any additional information must be submitted. If the information is not submitted as required, the application must be considered withdrawn unless the applicant requests in writing, and DHES approves, an extension of time for submission of the additional information. DHES may make additional information requests within 45 days after receipt of any required additional information, following the same procedure as the original information request. DHES shall notify DOR and the appropriate county commissioners of any information requests.

(4) DHES shall issue written notice to the applicant of the department's determination that a certification application is complete. DHES shall make a final decision whether to certify within 120 days after the date it issues the notice the application is complete. DHES shall provide written notice of its final determination to the applicant, DOR, and the appropriate county commissioners.

(5) Monetary valuations or costs used by DHES in the certification process are for purposes of identifying qualifying portions of the equipment, and are not binding on DOR or a county as to market value for tax purposes. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

16.9.103 ELIGIBILITY CRITERIA (1) To be certified as air and water pollution equipment, property, facilities, machinery, devices, and equipment must meet the definition of air and water pollution equipment contained in 15-6-135, MCA.

(2) As provided in 15-6-135(2)(a), MCA, operational techniques that reduce pollutants but do not require the installation or modification of specific facilities, machinery, devices, or equipment are not eligible for certification under this subchapter.

(3) To the extent that air or water pollution equipment is used for production or any purpose other than pollution control, it is not eligible for certification under this subchapter. Pursuant to the procedures in ARM 16.9.104, DHES shall apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control.

(4) For certification to be granted, an applicant must be in substantial compliance, on the date of application, with all rules, laws, orders, and permit conditions applicable to the equipment that is the subject of the application. Certification shall remain in effect only for as long as substantial compliance continues. Procedures for compliance inspection are as provided in ARM 16.9.105.

(5) Examples of equipment or facilities that may, to the extent used for pollution control purposes, qualify for certification include, but are not limited to, the following:

(a) inertial separators (cyclones, multiclones);

(b) wet collection devices (scrubbers);

(c) electrostatic precipitators;

(d) cloth filter collectors (baghouses);

(e) vapor recovery systems;

(f) wastewater treatment facilities;

(g) plants or equipment that render water safe for discharge;

(h) wastewater recycling systems that store or prevent pollutants from reaching the environment;

(i) spill control systems;

(j) secondary storage pond liners;

(k) monitoring wells that are part of a pollution control system.

(6) Examples of equipment or facilities that generally are not certifiable as air or water pollution equipment include, but are not limited to, the following:

(a) continuous air emission monitors that function as emission indicators but are not part of an air emission control system;

(b) dispersion devices such as stacks, chimneys, or vents;

(c) non-wastewater treatment facilities;

(d) stack sampling equipment, platforms, access facilities, stack extensions, portable monitoring equipment, or any other type of measuring device that is not part of a pollution control system;

(e) fuel changes except to the extent they are used for pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment; and

(f) energy conservation measures, except to the extent they are used for pollution control and require the installation or modification of specific facilities, machinery, devices, or equipment. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

16.9.104 APPORTIONMENT PROCEDURES (1) When air or water pollution equipment is used for production or any other purpose in addition to pollution control, DHES shall conduct an apportionment so that the certified portion of the multipurpose equipment reflects the extent to which it is used for pollution control purposes.

(2) The applicant shall provide DHES with all information necessary to conduct an apportionment under this rule. DHES shall conduct the apportionment based upon the specific facts and circumstances of each case. Methods for apportionment include, but are not limited to, the following:

(a) determination of the difference in value between equipment with integrated pollution controls and similar equipment without pollution controls. An example is a fluidized bed boiler with limestone injection for air emission control. The value of the fluidized bed boiler would be compared with the value of a similarly-sized conventional boiler, and the difference would be certified as the air pollution equipment value;

(b) determination of the difference in value between a facility designed for multiple purposes and a facility designed for pollution control only. The difference would be denied certification;

(c) distinguishing between equipment in a facility or process that removes pollutants and equipment that is used for production or other purposes;

(d) any other method based on specific facts and circumstances that achieves a fair and reasonable apportionment of pollution control and other uses. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

16.9.105 COMPLIANCE (1) DHES shall conduct periodic inspections of certified pollution control equipment for the purpose of determining whether the applicant is in substantial compliance with all applicable rules, laws, orders, and permit conditions. These inspections may be part of any required air or water quality inspection.

(2) DHES shall provide written notice of its determination of a failure of substantial compliance to the applicant, the DOR, and the appropriate county commissioners. In the event that substantial compliance is restored, the applicant must provide DHES with written notice, and DHES shall conduct an inspection and report its compliance determination to the applicant, the DOR, and the appropriate county commissioners within a reasonable time thereafter.

(3) DHES must submit certification and compliance determinations to DOR no later than February 1 of the year following the year for which tax adjustments are sought. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

16.9.106 INFORMAL CONFERENCE (1) DHES shall provide an applicant with an opportunity for an informal conference for reconsideration of a department determination regarding certification or noncompliance. The applicant must request an informal conference in writing within 10 days after receiving a notice of certification or noncompliance. (History: Sec. 15-6-135, MCA; IMP, Sec. 15-6-135, MCA; NEW, 1995 MAR p. 110, Eff. 1/27/95.)

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